

# FEDERAL REGISTER

THE NATIONAL ARCHIVES  
LITTERA  
SCRIPTA  
MANET  
OF THE UNITED STATES  
1934

VOLUME 27      NUMBER 244

Washington, Tuesday, December 18, 1962

## Contents

### Agricultural Stabilization and Conservation Service

RULES AND REGULATIONS:  
Sugar; quotas and quota deficits  
1962 ..... 12473

### Agriculture Department

See Agricultural Stabilization and Conservation Service.

### Alien Property Office

NOTICES:  
Melodi, S. A., and Edizioni Suvini  
Zerboni; notice of intention to  
return vested property ..... 12487

### Army Department

See Engineers Corps.

### Atomic Energy Commission

NOTICES:  
University of Texas; extension of  
completion date ..... 12489

### Civil Aeronautics Board

NOTICES:  
Mohawk Airlines, Inc., "use it or  
lose it" investigation; prehear-  
ing conference ..... 12489

### Commerce Department

See International Programs Bu-  
reau.

### Customs Bureau

RULES AND REGULATIONS:  
Documentation of vessels; sur-  
render of marine documents;  
requirements for approval by  
Maritime Administration ..... 12475

### Defense Department

See Engineers Corps.

### Engineers Corps

RULES AND REGULATIONS:  
Bridge regulations:  
Grand River and Spring Lake  
Outlet, Mich ..... 12482  
Shark River, N.J., and Lake  
Worth, Fla ..... 12482

### Federal Aviation Agency

RULES AND REGULATIONS:  
General Dynamics Convair Model  
340 aircraft; airworthiness di-  
rective ..... 12473

### Federal Communications Commission

NOTICES:  
AM growth problems; public con-  
ference ..... 12489  
Hearings, etc.:  
Desert Broadcasting Co., Inc.,  
and Manuel Martinez ..... 12489  
Greenwich Broadcasting Corp.  
et al ..... 12490  
Hudson Valley Broadcasting  
Corp. (WEOK) ..... 12491  
Sunbeam Television Corp ..... 12491  
Triangle Publications, Inc.  
(WNHC-TV) ..... 12491  
Western Broadcasters, Inc ..... 12491  
Western Union Telegraph Co.  
and California Interstate  
Telephone Co ..... 12491

PROPOSED RULE MAKING:  
Telephone companies, wire-tele-  
graph and ocean-cable carriers  
and radio-telegraph carriers;  
extension of time for comments ..... 12486

### Federal Maritime Commission

NOTICES:  
Six Ocean Carriers; application  
filed for approval ..... 12492

### Federal Power Commission

NOTICES:  
Hearings, etc.:  
Kansas-Nebraska Natural Gas  
Co., Inc ..... 12493

Texas Eastern Transmission  
Corp ..... 12493

### Federal Trade Commission

RULES AND REGULATIONS:  
Prohibited trade practices:  
Rosenthal, Philip, et al ..... 12474  
United States Testing Co., Inc. .... 12474  
Wayne L. Bowman Co., Inc. .... 12474

### Fiscal Service

RULES AND REGULATIONS:  
Sale of Treasury Bonds through  
competitive bidding ..... 12481

### Food and Drug Administration

NOTICES:  
Malathion; exemption for investi-  
gational use ..... 12489  
PROPOSED RULE MAKING:  
Food additives; filing of petitions  
(2 documents) ..... 12486  
RULES AND REGULATIONS:  
Drug certification; crude chlortet-  
racycline oral veterinary ..... 12480  
Food additives; further extension  
of effective date of statute for  
certain additives as direct addi-  
tives to food ..... 12475

### Health, Education, and Welfare Department

See Food and Drug Administra-  
tion.

### Housing and Home Finance Agency

NOTICES:  
Designations:  
Acting Assistant Administrator  
(Transportation) ..... 12494  
Acting Regional Director of Ad-  
ministration, Region III (At-  
lanta) ..... 12494

(Continued on next page)



**International Programs Bureau****NOTICES:**

Hydrocarbon Research, Inc., et al.; consent denial and probation order..... 12487

**Interstate Commerce Commission****NOTICES:**

Fourth section applications for relief..... 12496

**Justice Department**

See Alien Property Office.

**Labor Department**

See Wage and Hour Division.

**National Aeronautics and Space Administration****PROPOSED RULE MAKING:**

Patent waiver regulations; hearing..... 12486

**RULES AND REGULATIONS:**

Contract clauses; revision (see Part II of this issue).

Patent data and copyrights; revision (see Part II of this issue).

**Post Office Department****RULES AND REGULATIONS:**

Canada and Mexico; revised postage rates..... 12483

United States; new postage rates and fees..... 12484

**Securities and Exchange Commission****NOTICES:**

Hearings, etc.:

Columbia Gas System, Inc..... 12494

Preston Oil Co..... 12494

**Small Business Administration****NOTICES:**

Branch Counsel, Fargo, North Dakota; delegation relating to legal functions..... 12495

Branch Manager, Fargo, North Dakota; delegation relating to financial assistance, procurement and technical assistance, investment program, and administration..... 12494

Branch Manager, Sioux Falls, South Dakota; delegation relating to financial assistance, procurement and technical assistance, investment program, and administration..... 12494

**Treasury Department**

See Fiscal Service.

**Veterans Administration****RULES AND REGULATIONS:**

Vocational rehabilitation and education; extension of beginning and ending dates for education and training..... 12482

**Wage and Hour Division****NOTICES:**

Certificates authorizing employment of learners at special minimum rates..... 12495

**RULES AND REGULATIONS:**

Men's and boys' clothing and related products industry in Puerto Rico; wage order..... 12480

## Codification Guide

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

Monthly, quarterly, and annual cumulative guides, published separately from the daily issues, include the section numbers as well as the part numbers affected.

**7 CFR**

811..... 12473

**14 CFR**

507..... 12473

**PROPOSED RULES:**

1245..... 12486

**16 CFR**

13 (3 documents)..... 12474

**19 CFR**

3..... 12475

**21 CFR**

121..... 12475

146c..... 12480

**PROPOSED RULES:**

121 (2 documents)..... 12486

**29 CFR**

615..... 12480

**31 CFR**

340..... 12481

**33 CFR**

203 (2 documents)..... 12482

**38 CFR**

21..... 12482

**39 CFR**

Ch. I (2 documents)..... 12483, 12484

**41 CFR**

18-7 (see Part II of issue).

18-9 (see Part II of issue).

**47 CFR****PROPOSED RULES:**

31..... 12486

35..... 12486

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Compiled by Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, United States Government Printing Office, Washington 25, D.C.



Telephone

WOrth 3-3261

Prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D.C.

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# Rules and Regulations

## Title 7—AGRICULTURE

### Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

[Sugar Reg. 811, Amdt. 11]

#### PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

##### Quotas and Quota Deficits for 1962

*Basis and purpose and bases and considerations.* The purpose of this amendment to Sugar Regulation 811 (26 F.R. 11963; 27 F.R. 3733, 4585, 5255, 6863, 7951, 8208, 8530, 8821, 9883 and 10534) is to revise the determination and allocation of quota deficits pursuant to the Sugar Act of 1948, as amended, and as further amended by Public Law 87-535 and Public Law 87-539 (hereinafter referred to as the "Act").

Pursuant to section 204(a) of the Act the Secretary previously determined and prorated deficits totaling 721,044 short tons, raw value. Additional deficits of 50,000 short tons, raw value, in the quota for the Domestic Beet Sugar Area and 40,000 short tons, raw value, in the quota for Mexico, totaling 90,000 short tons, raw value, are herein determined and prorated to the Republic of the Philippines and to Western Hemisphere countries, in accordance with section 204(a) of the Act. The additional deficits determined herein are based upon recent information relative to prospective production and marketing of domestic beet sugar in 1962 with consideration to possible constructive deliveries of beet sugar, and information recently received from Union Nacional de Productores de Azúcar, S. A. de C. V., of Mexico, indicating the expected importation of sugar from Mexico during the remainder of 1962.

Based upon recent information on expected arrival of Philippine sugar before the end of 1962, it is hereby determined that the Republic of the Philippines will be able to supply approximately 35,000 tons of sugar within its share of deficits and such quantity, accordingly, is prorated to that country in accordance with the provisions of section 204(a) of the Act. The remainder of the total of 1962 deficits amounting to 776,044 short tons, raw value, is allocated as provided in section 204(a) of the Act to Western Hemisphere countries having quota prorations established pursuant to section 202(c) of the Act.

This action increases by 15,000 short tons, raw value, the quantity prorated to the Republic of the Philippines and increases by 75,000 short tons, raw value, the quota deficit quantity that may be authorized for importation from Western Hemisphere countries as a group. In view of the limited time remaining in the quota year, the increased quantity

that may be imported from the Western Hemisphere countries will be allocated for importation from countries in the Western Hemisphere for which quotas are established pursuant to section 202(c) (3) (A) in the order of priority as specified in Part 817 of this chapter.

In view of the short time remaining in the calendar year within which the additional sugar may be imported, it is essential at this time that all persons selling and purchasing sugar for consumption in the continental United States be informed as soon as possible of the changes in marketing opportunities. Therefore, it is hereby determined and found that compliance with the notice, procedure and effective date requirements of the Administrative Procedure Act is unnecessary, impracticable and contrary to the public interest and the amendment herein shall become effective when filed for public inspection in the Office of the Federal Register.

By virtue of the authority vested in the Secretary of Agriculture by the Act, Part 811 of this Chapter is hereby amended by amending subparagraph (2) of paragraph (a) of § 811.2, paragraph (a) of § 811.3 and subparagraph (2) of paragraph (b) and subparagraph (1) of paragraph (c) of § 811.4 as follows:

1. Subparagraph (2) of paragraph (a) of § 811.2 is amended by changing the quantity 245,769 to read 295,769.

2. Paragraph (a) of § 811.3 is amended by changing the quantities 716,364, 20,000 and 701,044 to read 806,364, 35,000 and 776,044, respectively; subparagraphs (1), (2), (3) and (4) remain unchanged; and a new subparagraph (5) is added to read as follows:

(5) 75,000 short tons, raw value, for importation into the United States on or before December 31, 1962, in the order of priority as specified in Part 817 of this chapter.

3. Subparagraph (2) of paragraph (b) of § 811.4 is amended by changing the quantity of 20,000 each place it appears to 35,000.

4. Subparagraph (1) of paragraph (c) of § 811.4 is amended by changing the quantity shown as the deficit in the proration for Mexico to read 67,045 tons instead of 27,045 tons, and changing the quota for Mexico as listed in tabular form to read 11,635 instead of 51,635.

(Sec. 403, 61 Stat. 932, 7 U.S.C. 1153. Interpretations or applies secs. 201, 202, 207, 208, 209, 210; 61 Stat. 923, as amended, 924, as amended, 927, as amended and 928, as amended; sec. 213 as added by Public Law 87-535; 7 U.S.C. 1111, 1112, 1117, 1118 and 1119; Public Law 87-539)

Issued at Washington, D.C., this 12th day of December 1962.

CHARLES S. MURPHY,  
Acting Secretary.

[F.R. Doc. 62-12465; Filed, Dec. 14, 1962; 8:43 a.m.]

## Title 14—AERONAUTICS AND SPACE

### Chapter III—Federal Aviation Agency

#### SUBCHAPTER C—AIRCRAFT REGULATIONS

[Reg. Docket No. 1523; Amdt. 519]

#### PART 507—AIRWORTHINESS DIRECTIVES

##### General Dynamics/Convair Model 340 Aircraft

There have been inflight openings of the rear service door on Convair Model 340 aircraft, one of which resulted in a fatality. In order to prevent inadvertent opening of the door, an airworthiness directive is being issued to require modification of the door latch mechanism. Since the modification parts are not readily available this directive also requires the incorporation of a door placard and a revision of the Airplane Flight Manual to include appropriate inspections and emergency procedures pending the modification of the door latch mechanism.

As a situation exists which demands immediate rule making action, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (25 F.R. 6489), § 507.10(a) of Part 507 (14 CFR Part 507), is hereby amended by adding the following new airworthiness directive:

GENERAL DYNAMICS/CONVAIR. Applies to all Model 340 aircraft which have not been modified to incorporate the provisions of Convair Service Bulletin 340-174A or equivalent approved by FAA Western Region Engineering and Manufacturing Branch.

Compliance required as indicated.

As a result of a number of inflight openings of the rear service door on Model 340 aircraft, (one such occurrence resulted in a fatal accident to a crew member) accomplish the following:

(a) Within the next 25 hours' time in service following the effective date of this AD unless already accomplished:

(1) Add a placard to the rear service door indicating the "Open", "Unsafe", and "Locked" position for the door handle in accordance with Convair Service Bulletin 340-213 dated October 15, 1956, or an FAA approved equivalent installation.

(2) Add a placard in the cockpit which requires that a flight crew member inspect the rear service door to determine that it is properly latched prior to takeoff.

(b) Within the next 100 hours' time in service following the effective date of this AD unless already accomplished:

(1) Incorporate an FAA approved revision to the FAA Approved Airplane Flight Manual as follows:

(i) In the "Limitation Section", add a note which requires that a flight crew member inspect the rear service door to determine that it is properly latched at the origin of the



flight and prior to takeoff thereafter, following each time the rear service door has been operated.

(ii) In the "Emergency Procedure Section", add a note which requires that the airplane be depressurized in accordance with the procedure prescribed in this Manual if there is evidence that a door latch has become disengaged or leakage around the door occurs.

(iii) When the FAA Approved Airplane Flight Manual is revised as prescribed in (b) (1) (i), the placard prescribed in (a) (2) may be removed.

(c) Within the next 600 hours' time in service following the effective date of this AD unless already accomplished:

(1) Install inspection holes and lights in the rear service door threshold for inspection of the lower door latches in accordance with Item 6 of Convair Newsletter No. 294 dated May 6, 1955, and Convair Service Bulletin 340-232 dated November 11, 1957, or an FAA Western Region Engineering and Manufacturing Branch approved equivalent installation.

(2) Install microswitches in the upper and lower forward latches of the rear service door in accordance with the portion of Convair Service Bulletin 340-126A dated June 1, 1954, and revised December 1, 1954, pertaining to the rear service door, or an FAA Western Region Engineering and Manufacturing Branch approved equivalent installation.

(3) Install proximity switches on the rear service door in accordance with the portion of Convair Service Bulletin 340-234 dated January 29, 1958, pertaining to the rear service door, or an FAA Western Region Engineering and Manufacturing Branch approved equivalent installation.

(d) Within the next 1,000 hours' time in service following the effective date of this AD unless already accomplished, install an irreversible clutch mechanism on the rear service door in accordance with Convair Service Bulletin 340-233 dated September 10, 1957, or an FAA Western Region Engineering and Manufacturing Branch approved equivalent.

NOTE: Many Model 340 aircraft incorporate the provisions of the Model 440 performance kit, Service Bulletin 340-144, and have incorrectly been redesignated as Model 440 aircraft. Such aircraft are still Model 340 and should be treated as such (see nameplate and manufacturing serial numbers).

(General Dynamics/Convair Service Bulletins 340-126A, 340-213, 340-232, 340-233, 340-234, and Service Newsletter No. 294 pertain to this subject.

This amendment shall become effective December 18, 1962.

(Secs. 313(a), 601, 603; 72 Stat. 752, 775, 776; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on December 3, 1962.

G. S. MOORE,  
Acting Director,  
Flight Standards Service.

[F.R. Doc. 62-12503; Filed, Dec. 17, 1962; 8:49 a.m.]

## Title 16—COMMERCIAL PRACTICES

### Chapter I—Federal Trade Commission

[Docket C-272]

#### PART 13—PROHIBITED TRADE PRACTICES

Wayne L. Bowman Co., Inc.

Subpart—Discriminating in price under section 2, Clayton Act—Payment or

acceptance of commission, brokerage or other compensation under 2(c): § 13.820 *Direct buyers*; § 13.822 *Lowered price to buyers*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 2, 49 Stat. 1526; 15 U.S.C. 13) [Cease and desist order, Wayne L. Bowman Co., Inc., Chattanooga, Tenn., Docket C-272, Nov. 29, 1962]

Consent order requiring a Chattanooga, Tenn., wholesaler of citrus fruit and produce to cease violating sec. 2(c) of the Clayton Act by receiving allowances in lieu of brokerage on purchases of citrus fruit from Florida packers for its own account for resale, usually at the rate of 10 cents per 1½ bushel box or a lower price reflecting said commission.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

*It is ordered*, That respondent Wayne L. Bowman Co., Inc., a corporation, and its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from: Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

*It is further ordered*, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: November 29, 1962.

By the Commission.

[SEAL] JOSEPH W. SHEA,  
Secretary.

[F.R. Doc. 62-12456; Filed, Dec. 17, 1962; 8:46 a.m.]

[Docket C-271]

#### PART 13—PROHIBITED TRADE PRACTICES

Philip Rosenthal et al.

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear*.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, Philip Rosenthal et al. trading as Philip Rosenthal Company, New York, N.Y., Docket C-271, Nov. 29, 1962]

*In the Matter of Philip Rosenthal and Sidney Rick, Individually and as Copartners Trading as Philip Rosenthal Company*

Consent order requiring New York City manufacturers to cease violating the Flammable Fabrics Act by selling in

commerce scarfs which were so highly flammable as to be dangerous when worn.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

*It is ordered*, That respondents Philip Rosenthal and Sidney Rick, individually and as copartners trading as Philip Rosenthal Company, or under any other name, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1(a) Importing into the United States; or

(b) Manufacturing for sale, selling, offering for sale, introducing, delivering for introduction, transporting or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any article of wearing apparel which, under the provisions of section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

2. Manufacturing for sale, selling, or offering for sale any article of wearing apparel made of fabric, which fabric has been shipped or received in commerce, and which under section 4 of the Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

3(a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported, for the purpose of sale or delivery after sale in commerce;

any fabric, which, under the provisions of section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals.

*It is further ordered*, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: November 29, 1962.

By the Commission.

[SEAL] JOSEPH W. SHEA,  
Secretary.

[F.R. Doc. 62-12454; Filed, Dec. 17, 1962; 8:46 a.m.]

[Docket C-277]

#### PART 13—PROHIBITED TRADE PRACTICES

United States Testing Co., Inc.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections*; § 13.15-80 *Government connection*. Subpart—Furnishing



means and instrumentalities of misrepresentation or deception: § 13.1055 *Furnishing means and instrumentalities of misrepresentation or deception.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, United States Testing Company, Inc., Hoboken, N.J., Docket C-277, Nov. 30, 1962]

Consent order requiring a Hoboken, N.J., corporation engaged in operating laboratories in various States and in the testing of products for manufacturers and merchandisers, to cease representing falsely that it was connected with the United States Government and that the tests were made or approved by that Government, through use of the words "United States" on the "Seal of Quality", its corporate name, and the Seal of the United States Testing Company, use of which it permitted for a consideration in advertisements of products on television and radio broadcasts and in magazines, newspapers, and other advertising material distributed to the public.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

*It is ordered*, That the United States Testing Company, Inc., a corporation, and its officers, and said respondent's agents, representatives and employees, directly or through any corporate or other device, in the conduct of testing materials, products or commodities, of manufacturers or merchandisers or others, and furnishing reports of such tests, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Furnishing any report of any such test under any corporate name, or with any seal or insignia containing the words "United States" to any person, firm or corporation for use in advertising to the general public the materials, products or commodities tested by respondent, or in any manner designating, describing or referring to respondent's business as, or otherwise representing, directly or by implication, in any such report that respondent is, an agency, branch or instrumentality of the United States Government, or that its business is in any way connected with the United States Government.

2. Placing in the hands of others for use in advertising any means or instrumentalities, by and through which the general public may be misled into the belief that the respondent is connected with or is an agency, branch or instrumentality of the United States Government, or that such tests of said materials, products or commodities were made or approved by the United States Government.

*It is further ordered*, That the United States Testing Company, Inc., a corporation, and its officers, and said respondent's agents, representatives and employees shall, affirmatively and in good faith, include in any report to, or in any contract, agreement or understanding with any person, firm or corporation, for whom respondent shall test said materials, products and commodities, an express provision that under no circumstances may the respondent's cor-

porate name, seal or any insignia, containing the words "United States", be used in advertising said materials, products or commodities to the general public.

*It is further ordered*, That the respondent United States Testing Company, Inc., a corporation, and its officers, and said respondent's agents, representatives and employees, shall, within sixty days after service upon it of this order, have notified all persons, firms and corporations with which respondent is presently under contract to test materials, products and commodities and to submit reports of such tests, or which are presently authorized by respondent to use, in advertising, reports of tests, previously made, that from the date of such notice, said persons, firms and corporations shall not use the corporate name of the respondent, its seal or any insignia, containing the words "United States" in the advertising of said materials, products or commodities to the general public.

*It is further ordered*, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: November 30, 1962.

By the Commission.

[SEAL] JOSEPH W. SHEA,  
Secretary.

[F.R. Doc. 62-12455; Filed, Dec. 17, 1962;  
8:46 a.m.]

## Title 19—CUSTOMS DUTIES

### Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 55781]

#### PART 3—DOCUMENTATION OF VESSELS

##### Surrender of Marine Documents; Requirements for Approval by Maritime Administration

The Maritime Administration has recently issued further rulings respecting the circumstances in which its approval will not be required under subsection O(a) of the Ship Mortgage Act, 1920 (46 U.S.C. 961(a)), for the surrender of the marine document of a vessel covered by a preferred mortgage.

Such rulings provide that an order of the Maritime Administration authorizing the surrender of the vessel's document shall not be required (1) where a document is issued in error or on an improper form, and (2) when the president or secretary whose name appears on the document of a vessel owned by a corporation dies, is removed, or resigns, and there has been no change in ownership. In order to incorporate these rulings in the Customs Regulations, footnote 19 to § 3.30(a) is amended to read:

"The requirement of subsection O(a) of the Ship Mortgage Act, 1920 (46 U.S.C. 961(a)), that the document of a vessel covered by a preferred mortgage may not be surren-

dered without the approval of the Maritime Administration and the mortgagee, does not apply to (1) a renewal of license, including a case in which the former document is replaced by reason of the fact that all renewal spaces are filled; (2) a change of document incident to a change of trade where the ownership and home port remain the same; (3) a change to a permanent document on arrival of a vessel at its home port under a temporary document; (4) the replacement or renewal of a lost, mislaid, or mutilated document where the ownership and home port remain the same; (5) the replacement of a document issued in error or on an improper form; or (6) the replacement of a document of a vessel owned by a corporation when the president or secretary whose name appears thereon dies, is removed, or resigns and there has been no change in ownership. A document may be deemed to be mutilated within the meaning of item (4) above when it has been partially burned, torn, soiled, or otherwise defaced so as to be unsuitable for the purpose for which it was issued.

(R.S. 161, sec. 2, 23 Stat. 118, as amended, sec. 30, subsec. O, 41 Stat. 1004, sec. 204, 49 Stat. 1987, as amended; 5 U.S.C. 22, 46 U.S.C. 2, 961, 1114)

[SEAL] PHILIP NICHOLS, Jr.,  
Commissioner of Customs.

Approved: December 6, 1962.

JAMES A. REED,  
Assistant Secretary of the  
Treasury.

[F.R. Doc. 62-12476; Filed, Dec. 17, 1962;  
8:48 a.m.]

## Title 21—FOOD AND DRUGS

### Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

#### SUBCHAPTER B—FOOD AND FOOD PRODUCTS

##### PART 121—FOOD ADDITIVES

##### Subpart A—Definitions and Procedural and Interpretative Regulations

##### FURTHER EXTENSION OF EFFECTIVE DATE OF STATUTE FOR CERTAIN SPECIFIED FOOD ADDITIVES

Pursuant to the authority provided in the Federal Food, Drug, and Cosmetic Act (sec. 6(c), Public Law 85-929, as amended sec. 2, Public Law 87-19; 72 Stat. 1788, as amended 75 Stat. 42; 21 U.S.C., note under sec. 342) and delegated to the Commissioner of Food and Drugs by the Secretary of Health, Education, and Welfare (25 F.R. 8625), the food additive regulations (21 CFR 121.90, 121.91) are amended as follows:

1. Section 121.90 is amended by changing certain items and by adding certain items as follows:

§ 121.90 Further extension of effective date of statute for certain specified food additives as direct additives to food.<sup>1</sup>

\* \* \* \* \*

<sup>1</sup>The inclusion of substances specified as dietary supplements in this list does not constitute a finding by the Food and Drug Administration that the substance is useful as a supplement to the diet for humans.



| Product                                                                                                                                                                                                                                                                                                                                                                      | Specified uses or restrictions                                                                                     | Effective date of statute extended to— |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| Aluminum stearate.....                                                                                                                                                                                                                                                                                                                                                       | Component of deoamer used in manufacture of beet sugar.                                                            | July 1, 1963                           |
| BHA (butylated hydroxyanisole).....                                                                                                                                                                                                                                                                                                                                          | Component of deoamer used in manufacture of beet sugar; limit 0.1% of deoamer.                                     | Do.                                    |
| BHT (butylated hydroxytoluene).....                                                                                                                                                                                                                                                                                                                                          | Component of deoamer used in manufacture of yeast; limit 0.1% of deoamer.                                          | Do.                                    |
| Betaine, anhydrous, or betaine hydrochloride.....                                                                                                                                                                                                                                                                                                                            | Component of deoamer used in manufacture of beet sugar; limit 0.1% of deoamer.                                     | Do.                                    |
| Boron (from sodium borate or boric acid).....                                                                                                                                                                                                                                                                                                                                | Component of deoamer used in yeast production; limit 0.1% of deoamer.                                              | Do.                                    |
| Butyl stearate.....                                                                                                                                                                                                                                                                                                                                                          | Dietary supplement; limit 100 mg. per day.                                                                         | Jan. 1, 1964                           |
| Cobalt (from cobalt gluconate, sulfate, chloride, or carbonate).....                                                                                                                                                                                                                                                                                                         | Dietary supplement; limit 0.1 mg. cobalt per day.                                                                  | Do.                                    |
| Copper (from copper chloride, copper sulfate, cupric oxide, or copper gluconate).....                                                                                                                                                                                                                                                                                        | Dietary supplement; limit 2.0 mg. copper per day.                                                                  | Do.                                    |
| Disodium ethylenediamine tetraacetate.....                                                                                                                                                                                                                                                                                                                                   | Trace mineral solubilizer for feeds for ruminant animals; limit 200 p.p.m. in food.                                | Do.                                    |
| Eugenol.....                                                                                                                                                                                                                                                                                                                                                                 | Component of deoamer used in manufacture of beet sugar; limit 0.1% of deoamer.                                     | July 1, 1963                           |
| Ferrous citrate.....                                                                                                                                                                                                                                                                                                                                                         | Component of deoamer used in production of yeast; limit 0.1% of deoamer.                                           | Do.                                    |
| Ferrous fumarate.....                                                                                                                                                                                                                                                                                                                                                        | Nutrient and dietary supplement.                                                                                   | Jan. 1, 1964                           |
| Ferrous fumarate, or sodium fluoride.....                                                                                                                                                                                                                                                                                                                                    | Dietary supplement; limit 115 mg. iron per day.                                                                    | Do.                                    |
| Formaldehyde.....                                                                                                                                                                                                                                                                                                                                                            | Dietary supplement; limit 0.5 mg. fluorine per day.                                                                | Do.                                    |
| Isopropyl alcohol.....                                                                                                                                                                                                                                                                                                                                                       | Component of deoamer used in production of beet sugar; limit 0.01 p.p.m. in sugar.                                 | July 1, 1963                           |
| Lecithin, hydroxylated.....                                                                                                                                                                                                                                                                                                                                                  | Component of deoamer used in production of yeast; limit 0.01 p.p.m. in final product.                              | Do.                                    |
| Menadione.....                                                                                                                                                                                                                                                                                                                                                               | Component of deoamer used in manufacture of beet sugar.                                                            | Do.                                    |
| DL-Methionine.....                                                                                                                                                                                                                                                                                                                                                           | Component of deoamer used in production of yeast.                                                                  | Do.                                    |
| Methyl ethyl cellulose.....                                                                                                                                                                                                                                                                                                                                                  | Dietary supplement; limit 1 mg. per day.                                                                           | Jan. 1, 1964                           |
| Mineral oil:                                                                                                                                                                                                                                                                                                                                                                 | In vegetable fat whipped topping; limit 3% in topping.                                                             | July 1, 1963                           |
| The standard reference absorption shall be the absorption of a solution of naphthalene (Natl. Bur. of Standards Standard Material No. 577 or naphthalene of equivalent purity) at a concentration of 7 mg. per liter in purified iso-octane measured against iso-octane of the same spectral purity in a 10-mm. cell at 275 m $\mu$ . (This absorption as reported is 0.30.) | In coatings for fresh fruits and vegetables; limit 35 p.p.m. in food on which used.                                | Do.                                    |
| The absorption of the mineral oil measured under the same instrumental conditions as the standard reference absorption shall not exceed any of the following limits:                                                                                                                                                                                                         | Deoamer used in food processing; limit 150 p.p.m. in food.                                                         | Do.                                    |
| 1. The standard reference absorption when the absorption of the oil is measured in a 10-mm. cell against water at 275 m $\mu$ .                                                                                                                                                                                                                                              | Lubricant and binder for capsules and tablets supplying small quantities of flavor, spice, nutrient, and vitamins. | Do.                                    |
| 2. 75% of the standard reference absorption when the absorption of the oil is measured in a 10-mm. cell against water in the range 295 m $\mu$ to 299 m $\mu$ inclusive.                                                                                                                                                                                                     | In animal feed; limit 600 p.p.m. in total daily ration; zero in tissues of slaughtered animals, milk, and eggs.    | Do.                                    |
| 3. 60% of the standard reference absorption when the absorption of the oil is measured in a 10-mm. cell against water in the range 300 m $\mu$ to 400 m $\mu$ inclusive.                                                                                                                                                                                                     | Sealant in food production to prevent access of air and retard evaporation; limit 50 p.p.m. in food.               | Do.                                    |
| 1 Progress report required by July 1, 1963.                                                                                                                                                                                                                                                                                                                                  |                                                                                                                    |                                        |
| Product                                                                                                                                                                                                                                                                                                                                                                      | Specified uses or restrictions                                                                                     | Effective date of statute extended to— |
| Molybdenum (from sodium molybdate, molybdenum trioxide, molybdenum sesquioxide, ammonium molybdate).....                                                                                                                                                                                                                                                                     | Component of deoamer used in production of beet sugar and yeast.                                                   | Jan. 1, 1964                           |
| Nickel (from nickel sulfate).....                                                                                                                                                                                                                                                                                                                                            | Dietary supplement; limit 1.0 mg. nickel per day.                                                                  | Do.                                    |
| Oxystearin.....                                                                                                                                                                                                                                                                                                                                                              | Component of deoamer used in production of beet sugar and yeast.                                                   | July 1, 1963                           |
| Petrolatum, N.F. and U.S.P.; Ultraviolet absorptivity (as defined in ASTM E-131): 2.0 liters per gram centimeter maximum at 290 m $\mu$ .                                                                                                                                                                                                                                    | Component of protective coating for cheese.                                                                        | Do.                                    |
| Petroleum hydrocarbons: Initial boiling point 315° F. minimum; final boiling point 650° F. maximum; ultraviolet absorptivity: 0.04 liter per gram centimeter maximum at 290 m $\mu$ .                                                                                                                                                                                        | Component of coating for fruits and vegetables.                                                                    | Do.                                    |
| Polyoxyethylene glycol (mol. wt. 400-2,000).....                                                                                                                                                                                                                                                                                                                             | Component of deoamer in yeast and beet sugar production; limit 5 p.p.m. in final product.                          | Do.                                    |
| Polyoxyethylene glycol (600) glycol dioleate.....                                                                                                                                                                                                                                                                                                                            | In animal feed; limit 500 p.p.m. in total daily ration; zero in tissues of slaughtered animals, milk, and eggs.    | Do.                                    |
| Polyoxyethylene glycol (600) glycol mono- and di-esters from the alcoholysis of soybean oil and/or hydrogenated tallow.                                                                                                                                                                                                                                                      | Deoamer in food processing; limit 3 p.p.m. residue in final food.                                                  | Do.                                    |
| Propylene glycol and glyceryl mono- and di-esters from the alcoholysis of soybean oil and/or hydrogenated tallow.                                                                                                                                                                                                                                                            | Component of detergent for removing insecticide from fruit; limit 1 p.p.m. residue on fruit.                       | Do.                                    |
| Rutin.....                                                                                                                                                                                                                                                                                                                                                                   | In food-defatting process for cleaning vegetables; limit 5 p.p.m. residue in food.                                 | Do.                                    |
| Soybean fatty acids, hydroxylated.....                                                                                                                                                                                                                                                                                                                                       | Component of deoamer used in manufacture of beet sugar.                                                            | Do.                                    |
| Tallow alcohol, hydrogenated.....                                                                                                                                                                                                                                                                                                                                            | Component of deoamer used in production of yeast.                                                                  | Do.                                    |
| Tallow, oxidized.....                                                                                                                                                                                                                                                                                                                                                        | Component of deoamer used in production of beet sugar and yeast.                                                   | Do.                                    |
| Tallow sulfated.....                                                                                                                                                                                                                                                                                                                                                         | Component of deoamer used in production of beet sugar.                                                             | Do.                                    |
| Tortilla yeast, dried.....                                                                                                                                                                                                                                                                                                                                                   | Component of deoamer used in manufacture of beet sugar; limit 40 p.p.m. in final product.                          | Do.                                    |
| Wax, microcrystalline and paraffin:                                                                                                                                                                                                                                                                                                                                          | Component of deoamer used in production of yeast; limit 40 p.p.m. in final product.                                | Do.                                    |
| Type I: A congealing point of 160° F. maximum (ASTM D-438); ultraviolet absorptivity (ASTM E-131): 0.30 liter per gram centimeter maximum at 290 m $\mu$ ; color of 1.5% maximum (ASTM D-791); and a Skybolt color of 20 minimum (ASTM D-1500).                                                                                                                              | Component of deoamer used in manufacture of beet sugar.                                                            | Do.                                    |
| Type II: Ultraviolet absorptivity: 1.0 liter per gram centimeter maximum at 290 m $\mu$ ; color content of 5.0% maximum, and a color of 3.0 maximum (ASTM D-1500).                                                                                                                                                                                                           | In food for special dietary use; limit 0.4 mg. of folic acid per gm. of yeast.                                     | Do.                                    |
| Yeast, dried.....                                                                                                                                                                                                                                                                                                                                                            | Component of chewing gum base.                                                                                     | Do.                                    |



2. Section 121.91 is amended as follows:

a. The "Miscellaneous" portion of the list is amended by revoking the items "2,2'-Methylenebis-(4-methyl-6-tert-butylphenol)" and "Phthalimidoethyl propionate" at the request of the petitioner.

b. The list is amended further by changing the date on certain items and by adding certain items as follows:

| Product                                                                                               | Specified uses or restrictions                                                                            | Effective date of statute extended to— |
|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|----------------------------------------|
| N-Acetyl, N'-hydroxyethyl, N-oleyl ethylenediamine.                                                   | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.             | July 1, 1963                           |
| Acrylic acid and its methyl, ethyl, and butyl esters copolymerized with one or more of the following: | Component of coating of paper and paperboard for food packaging.                                          | Do.                                    |
| Itaconic acid.                                                                                        |                                                                                                           |                                        |
| Methacrylic acid and its methyl and ethyl esters.                                                     |                                                                                                           |                                        |
| Alcohols:                                                                                             |                                                                                                           |                                        |
| Butyl, <i>tert</i> -butyl, isobutyl, and myristyl.                                                    | Paper coating adjuvant used in the manufacture of food packaging.                                         | Do.                                    |
| Aluminum stearate.                                                                                    | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.             | Do.                                    |
| Ammonium persulfate.                                                                                  | Component of coating of paper and paperboard for food packaging.                                          | Do.                                    |
| Anhydroformaldehyde aniline resin.                                                                    | Component of a phenolic molding compound for use in processing, holding, packaging, or transporting food. | Do.                                    |
| Anthracene, ground.                                                                                   | do.                                                                                                       | Do.                                    |
| Asbestos fiber.                                                                                       | do.                                                                                                       | Do.                                    |
| Butoxypropylene (20) glycol (mol. wt. 1,260).                                                         | Paper coating adjuvant used in manufacture of food packages.                                              | Do. <sup>1</sup>                       |
| Butoxypropylene (40) glycol (mol. wt. 2,400).                                                         | do.                                                                                                       | Do. <sup>1</sup>                       |
| Butoxypropylene (20) glycol monoolate.                                                                | do.                                                                                                       | Do.                                    |
| Butoxypropylene (40) glycol monostearate.                                                             | do.                                                                                                       | Do.                                    |
| n-Butyl acetate.                                                                                      | Solvent for coatings for polyolefin films for food packaging; limit 0.1% residue on film.                 | Do.                                    |
| Butyl-acetyl ricinoleate.                                                                             | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.             | Do.                                    |
| n-Butyl alcohol.                                                                                      | Solvent for coatings for polyolefin films for food packaging; limit 0.1% residue on film.                 | Do.                                    |
| Butyl palmitate.                                                                                      | Component of textile-processing lubricant used in manufacture of filter fabric for food processing.       | Do.                                    |
| Butyl, propyl, and isobutyl oleate, sulfated.                                                         | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.             | Do.                                    |
| Butyl stearate.                                                                                       | Component of textile-processing lubricant used in manufacture of filter fabric for food processing.       | Do.                                    |
| Candelilla wax.                                                                                       | Component of paper and paperboard for food packaging.                                                     | Do.                                    |
| ε-Caprolactam polymer.                                                                                | Component of food-packaging material (other than milk and food-handling material).                        | Do.                                    |
| Carbon disulfide.                                                                                     | Fungicant for grain-mill machinery.                                                                       | Do.                                    |
| Carbon tetrachloride.                                                                                 | do.                                                                                                       | Do.                                    |
| Castor oil, potassium soap.                                                                           | Paper coating adjuvant used in manufacture of food packages.                                              | Do.                                    |
| Castor oil, sulfated.                                                                                 | do.                                                                                                       | Do.                                    |
| Castor oil, sulfated, potassium soap.                                                                 | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.             | Do.                                    |
| Cetyl alcohol.                                                                                        | Paper coating adjuvant used in manufacture of food packages.                                              | Do.                                    |
| p-Chlorometacresol.                                                                                   | Components of coating of paper and paperboard for food packaging.                                         | Do.                                    |
| Cyclohexane.                                                                                          | Paper coating adjuvant used in manufacture of food packages as a preservative.                            | Do.                                    |
| Di- <i>tert</i> -butyl hydroquinone.                                                                  | Component of paper and paperboard for food packaging.                                                     | Do.                                    |
| 2,4-Di- <i>tert</i> -butyl hydroquinone.                                                              | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.             | Do.                                    |
| Diethanolamine.                                                                                       | Component of a textile-processing lubricant used in manufacture of filter fabric for food processing.     | Do.                                    |
|                                                                                                       | Component of paper and paperboard for food packaging, as preservative only.                               | Do.                                    |
|                                                                                                       | Paper coating adjuvant used in manufacture of food packages.                                              | Do.                                    |

<sup>1</sup> Progress report required by July 1, 1963.

| Product                                                                                                                                                                                                          | Specified uses or restrictions                                                                         | Effective date of statute extended to— |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|----------------------------------------|
| Diethylene glycol monolaurate.                                                                                                                                                                                   | Component of a textile-processing lubricant used in manufacture of filter fabric for food processing.  | July 1, 1963                           |
| Diisopropanol monoamide of tallow fatty acids.                                                                                                                                                                   | Component of paper and paperboard for food packaging.                                                  | Do.                                    |
| Dimethylpolysiloxane.                                                                                                                                                                                            | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.          | Do.                                    |
|                                                                                                                                                                                                                  | Component of coating of paper and paperboard for food packaging.                                       | Do.                                    |
|                                                                                                                                                                                                                  | In manufacture of food containers.                                                                     | Do.                                    |
| Dimethylpolysiloxane, 100 centistokes minimum.                                                                                                                                                                   | Component of a textile-processing lubricant used in manufacture of filter fabric for food processing.  | Do.                                    |
| Diphenylamine.                                                                                                                                                                                                   | Component of paper and paperboard for food packaging as preservative only.                             | Do.                                    |
| Ethyl acrylate and methyl methacrylate copolymers of itaconic acid or methacrylic acid.                                                                                                                          | Component of coating of paper and paperboard for food packaging.                                       | Do.                                    |
| Ethylenediamine tetraacetic acid, sodium salt.                                                                                                                                                                   | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.          | Do.                                    |
| Ethylenediamine tetraacetic acid, sodium, potassium and calcium salts.                                                                                                                                           | Component of paper and paperboard for food packaging.                                                  | Do.                                    |
| Ethylenimine polymerized.                                                                                                                                                                                        | In the manufacture of paper and paperboard for food packaging.                                         | Do.                                    |
|                                                                                                                                                                                                                  | In the manufacture of filter and blotter paper for food processing.                                    | Do.                                    |
| Fatty acid (C <sub>10</sub> -C <sub>18</sub> ) diethanolamide condensate.                                                                                                                                        | Components of a textile-processing lubricant used in manufacture of filter fabric for food processing. | Do.                                    |
| Fatty acid (C <sub>10</sub> -C <sub>18</sub> ) mono- and diesters of polyoxyethylene glycol (mol. wt. 400-3,000).                                                                                                | do.                                                                                                    | Do.                                    |
| Fatty acid (C <sub>10</sub> -C <sub>18</sub> ) triethanolamide condensate.                                                                                                                                       | do.                                                                                                    | Do.                                    |
| Fatty triglycerides and marine oils, including the fatty acids and fatty alcohols derived from castor, coconut, cottonseed, fish, mustard seed, palm, peanut, rapeseed, rice bran, soybean, sperm, and tall oil. | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.          | Do.                                    |
| Fatty triglycerides, fatty acids, or fatty alcohols and marine oils described in preceding item reacted with:                                                                                                    | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.          | Do.                                    |
| n-Butyl and isobutyl alcohol (esters);                                                                                                                                                                           |                                                                                                        |                                        |
| Diethylene glycol (esters);                                                                                                                                                                                      |                                                                                                        |                                        |
| Diethanolamine (amides);                                                                                                                                                                                         |                                                                                                        |                                        |
| Glycerin (esters);                                                                                                                                                                                               |                                                                                                        |                                        |
| Methyl alcohol (hydrogenated);                                                                                                                                                                                   |                                                                                                        |                                        |
| Oxygen (oxidized or blown);                                                                                                                                                                                      |                                                                                                        |                                        |
| Polyethylene glycol (esters);                                                                                                                                                                                    |                                                                                                        |                                        |
| Potassium hydroxide (soap);                                                                                                                                                                                      |                                                                                                        |                                        |
| Propylene glycol (esters);                                                                                                                                                                                       |                                                                                                        |                                        |
| Sodium hydroxide (soaps);                                                                                                                                                                                        |                                                                                                        |                                        |
| Sulfuric acid (sulfated).                                                                                                                                                                                        |                                                                                                        |                                        |
| Fish oil, hydrogenated.                                                                                                                                                                                          | Component of paper and paperboard for food packaging.                                                  | Do.                                    |
| Fish oil, hydrogenated, potassium soap.                                                                                                                                                                          | do.                                                                                                    | Do.                                    |
| Formaldehyde.                                                                                                                                                                                                    | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.          | Do.                                    |
| Formaldehyde.                                                                                                                                                                                                    | Paper coating adjuvant used in manufacture of food packages.                                           | Do.                                    |
| Glycerol mono- (12) hydroxy-stearate.                                                                                                                                                                            | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.          | Do.                                    |
| Hexane.                                                                                                                                                                                                          | Paper coating adjuvant used in manufacture of food packages.                                           | Do.                                    |
| Hexylene glycol (2-methyl-2,4-dihydroxyphenyl).                                                                                                                                                                  | do.                                                                                                    | Do.                                    |
| Hydrocarbons, aliphatic (boiling range 318° to 394° F.).                                                                                                                                                         | In manufacture of paper and paperboard for food packaging.                                             | Do.                                    |
| Hydrocarbons, aromatic (boiling range 362° to 490° F.).                                                                                                                                                          | do.                                                                                                    | Do.                                    |
| N-Hydroxyethylurea.                                                                                                                                                                                              | Paper coating adjuvant used in manufacture of food packages.                                           | Do.                                    |
| N-bis (Hydroxyethyl) lauramide.                                                                                                                                                                                  | do.                                                                                                    | Do.                                    |
| Isobutyl alcohol.                                                                                                                                                                                                | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.          | Do.                                    |
| Isobutylene-isoprene copolymer.                                                                                                                                                                                  | In manufacture of food packaging.                                                                      | Do.                                    |
| Isobutyl oleate, sulfated.                                                                                                                                                                                       | Paper coating adjuvant used in manufacture of food packages.                                           | Do.                                    |



## RULES AND REGULATIONS

| Product                                                                                                                                                                                                                                                                                                                         | Specified uses or restrictions                                                                                | Effective date of statute extended to— |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|----------------------------------------|
| Isobutyl palmitate.....                                                                                                                                                                                                                                                                                                         | Component of a textile-processing lubricant used in manufacture of filter fabric for food processing.         | July 1, 1963                           |
| Isobutyl stearate.....                                                                                                                                                                                                                                                                                                          | do.                                                                                                           | Do.                                    |
| Isopropyl alcohol.....                                                                                                                                                                                                                                                                                                          | Component of paper and paperboard for food packaging.                                                         | Do.                                    |
| Isopropylated <i>m</i> -cresol.....                                                                                                                                                                                                                                                                                             | Component of paper and paperboard for food packaging.                                                         | Do.                                    |
| Isopropylated <i>p</i> -cresol.....                                                                                                                                                                                                                                                                                             | Component of paper and paperboard for food packaging, as preservative only.                                   | Do.                                    |
| Isopropylated mono- and di-, <i>m</i> and <i>p</i> .....                                                                                                                                                                                                                                                                        | do.                                                                                                           | Do.                                    |
| <i>p,p'</i> -Isopropylidene diphenyl and carbonyl chloride copolymer.....                                                                                                                                                                                                                                                       | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.                 | Do.                                    |
| Kerosene.....                                                                                                                                                                                                                                                                                                                   | Packaging, processing, and holding food.                                                                      | Do.                                    |
| Kerosene, deodorized.....                                                                                                                                                                                                                                                                                                       | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.                 | Do.                                    |
| Lecithin, hydroxylated.....                                                                                                                                                                                                                                                                                                     | Component of paper and paperboard for food packaging.                                                         | Do.                                    |
| Lignin sulfonates, calcium and sodium salts.....                                                                                                                                                                                                                                                                                | Component of paper and paperboard for food packaging.                                                         | Do.                                    |
| Linseed oil.....                                                                                                                                                                                                                                                                                                                | do.                                                                                                           | Do.                                    |
| Methacrylic acid and its ethyl esters copolymerized with itaconic acid.....                                                                                                                                                                                                                                                     | Component of a textile-processing lubricant used in manufacture of filter fabric for food processing.         | Do.                                    |
| Methyl esters of fatty acids ( $C_{10}$ - $C_{18}$ ).....                                                                                                                                                                                                                                                                       | Solvent for coatings for polyolefin films for food packaging; limit 0.1% residue on film.                     | Do.                                    |
| Methyl ethyl ketone.....                                                                                                                                                                                                                                                                                                        | As a secondary plasticizing agent in rubber articles having food contact.                                     | Do.                                    |
| Mineral oil meeting the following specifications: Virgin distillate from petroleum; no cracked products present; Percent boiling below 700° F. (50% minimum); Percent boiling below 775° F. (95% minimum).....                                                                                                                  | Component of a textile-processing lubricant used in manufacture of filter fabric for food processing.         | Do.                                    |
| Mineral oil.....                                                                                                                                                                                                                                                                                                                | Component of an impregnant in tissue paper used for wrapping fruits and vegetables; limit 150 p.p.m. on food. | Do.                                    |
| This standard reference absorption shall be the absorption of a solution of naphthalene (Neel Bur of Standards Standard Material No. 577 or naphthalene of equivalent purity) at a concentration of 7 mg. per liter in purified isooctane measured against isooctane of the same spectral purity in a 10-mm. cell at 275mμ..... | Dough divider oil, pan oil, and trough grease; limit 1,500 p.p.m. in bakery products.                         | Do.                                    |
| (This absorption as reported is 0.30.) The absorption of the mineral oil measured under the same instrumental conditions as the standard reference absorption shall not exceed any of the following limits:                                                                                                                     | Impregnant of butcher paper for meat packing; limit 150 p.p.m. on food.                                       | Do.                                    |
| 1. The standard reference absorption in a 10-mm. cell against water at 275mμ.....                                                                                                                                                                                                                                               | In manufacture of molded pulp apple trays; limit 150 p.p.m. on food.                                          | Do.                                    |
| 2. 75% of the standard reference absorption when the absorption of the oil is measured in a 10-mm. cell against water in the range 295mμ to 296mμ, inclusive.                                                                                                                                                                   | Lubricant in meatpacking plants; limit 50 p.p.m. in meat.                                                     | Do.                                    |
| 3. 60% of the standard reference absorption when the absorption of the oil is measured in a 10-mm. cell against water in the range 300mμ to 400mμ, inclusive.                                                                                                                                                                   | Release agent in drying pans in preparing dried egg albumin; limit 1,000 p.p.m. in dried egg albumin.         | Do.                                    |
| Mineral spirits (boiling range 310° to 330° F.).....                                                                                                                                                                                                                                                                            | Release agent in drying pans in preparing dried fruits and vegetables.                                        | Do.                                    |
| <i>N</i> -Monomethylamide of 0,0-dimethyl-dithiophosphoryl acetic acid.....                                                                                                                                                                                                                                                     | do.                                                                                                           | Do.                                    |
| Mustard seed oil, sulfated.....                                                                                                                                                                                                                                                                                                 | Component of paper and paperboard for food packaging.                                                         | Do.                                    |
| Naphtha.....                                                                                                                                                                                                                                                                                                                    | do.                                                                                                           | Do.                                    |
| $\beta$ -Naphthol.....                                                                                                                                                                                                                                                                                                          | do.                                                                                                           | Do.                                    |
| Product                                                                                                                                                                                                                                                                                                                         | Specified uses or restrictions                                                                                | Effective date of statute extended to— |
| Oleic acid, sulfated.....                                                                                                                                                                                                                                                                                                       | Paper coating adjuvant used in manufacture of food packages.                                                  | July 1, 1963                           |
| Petrolatum.....                                                                                                                                                                                                                                                                                                                 | Component of coating of paper and paperboard for food packaging.                                              | Do.                                    |
| Petrolatum, N.F. and U.S.P. Ultraviolet absorptivity (as defined in ASTM E-131): 20 liters per gram centimeter maximum at 290 mμ.....                                                                                                                                                                                           | Secondary plasticizing agent in rubber articles having food contact.                                          | Do.                                    |
| Petrolatum, N.F. and U.S.P. Ultraviolet absorptivity (as defined in ASTM E-131): 20 liters per gram centimeter maximum at 290 mμ.....                                                                                                                                                                                           | As a component of packaging materials.                                                                        | Do.                                    |
| Petrolatum, N.F. and U.S.P. Ultraviolet absorptivity (as defined in ASTM E-131): 20 liters per gram centimeter maximum at 290 mμ.....                                                                                                                                                                                           | Dough divided oil, pan oil, and trough grease; limit 1,500 p.p.m. in bakery products.                         | Do.                                    |
| Petrolatum, N.F. and U.S.P. Ultraviolet absorptivity (as defined in ASTM E-131): 20 liters per gram centimeter maximum at 290 mμ.....                                                                                                                                                                                           | Lubricant in meatpacking plants; limit 50 p.p.m. in meat.                                                     | Do.                                    |
| Petroleum hydrocarbons, aliphatic: Initial boiling point 315° F. minimum; final boiling point 650° F. maximum; ultraviolet absorptivity 0.04 liter per gram centimeter maximum at 290 mμ.....                                                                                                                                   | Release agent in drying pans in preparing dried egg albumin; limit 1,000 p.p.m. in dried egg albumin.         | Do.                                    |
| Petroleum sulfonate made by sulfonating a straight chain aliphatic hydrocarbon of the $C_{12}$ to $C_{18}$ range.....                                                                                                                                                                                                           | Lubricant for food-processing machinery.                                                                      | Do.                                    |
| Pine oil.....                                                                                                                                                                                                                                                                                                                   | Adjuvant for insecticides in food-processing plants; limit 1 p.p.m. residue on food.                          | Do.                                    |
| Polyester resin formed by reacting the acid groups in montan wax with ethylene glycol.....                                                                                                                                                                                                                                      | In manufacture of food packaging.                                                                             | Do.                                    |
| Polyisobutylene.....                                                                                                                                                                                                                                                                                                            | Component of food packaging of material.                                                                      | Do.                                    |
| Polyoxyethylene (4 mols) decyl phosphate (ethoxylated isomeric decyl alcohols, phosphate salts).....                                                                                                                                                                                                                            | Surface active agent in pulp suspensions used in manufacture of paper and paperboard.                         | Jan. 1, 1964                           |
| Polyoxyethylene (1-15 mols) ether of <i>p</i> -isooctylphenol (1 mol).....                                                                                                                                                                                                                                                      | Paper coating adjuvant used in manufacture of food packages.                                                  | July 1, 1963                           |
| Polyoxyethylene (9-10 mols) ether of isooctylphenol.....                                                                                                                                                                                                                                                                        | Component of a textile-processing lubricant used in manufacture of filter fabric for food processing.         | Do.                                    |
| Polyoxyethylene (1-15 mols) ether of <i>p</i> -monylphenol.....                                                                                                                                                                                                                                                                 | Paper coating adjuvant used in manufacture of food packages.                                                  | Do.                                    |
| Polyoxyethylene (9-10 mols) ether of monylphenol.....                                                                                                                                                                                                                                                                           | Component of a textile-processing lubricant used in manufacture of filter fabrics for food processing.        | Do.                                    |
| Polyoxyethylene (5-15 mols ethylene oxide) ether of monyl- (1 mol) or octylphenol (1 mol).....                                                                                                                                                                                                                                  | Adjuvant or laminant used in manufacture of textile fibers or fabrics for packaging dry food.                 | Do.                                    |
| Polyoxyethylene (20) ether of oleyl alcohol.....                                                                                                                                                                                                                                                                                | Paper coating adjuvant used in manufacture of food packages.                                                  | Do.                                    |
| Polyoxyethylene (1.5-15 mols) ether of tridecyl alcohol (1 mol).....                                                                                                                                                                                                                                                            | do.                                                                                                           | Do.                                    |
| Polyoxyethylene (4 mols) ethylenediamine monolauramide.....                                                                                                                                                                                                                                                                     | Component of a textile-processing lubricant used in manufacture of filter fabric for food processing.         | Do.                                    |
| Polyoxyethylene (600) glycol ester of tall oil fatty acids.....                                                                                                                                                                                                                                                                 | Component of paper and paperboard for food packaging.                                                         | Do.                                    |
| Polyoxyethylene (400) glycol monolaurate.....                                                                                                                                                                                                                                                                                   | do.                                                                                                           | Do.                                    |
| Polyoxyethylene (400) glycol monostearate.....                                                                                                                                                                                                                                                                                  | do.                                                                                                           | Do.                                    |
| Polyoxyethylene (3000) glycol monostearate.....                                                                                                                                                                                                                                                                                 | do.                                                                                                           | Do.                                    |
| Polyoxyethylene (3000) glycol monostearate.....                                                                                                                                                                                                                                                                                 | do.                                                                                                           | Do.                                    |
| Polyoxyethylene (20) sorbitan monolaurate.....                                                                                                                                                                                                                                                                                  | Paper coating adjuvant used in manufacture of food packages.                                                  | Do.                                    |
| Polyoxyethylene (20) sorbitan tristearate.....                                                                                                                                                                                                                                                                                  | do.                                                                                                           | Do.                                    |
| Polyoxypropylene (16-30 mols)-polyoxyethylene (17-400 mols)-glycol.....                                                                                                                                                                                                                                                         | do.                                                                                                           | Do.                                    |

<sup>1</sup> Progress report required by July 1, 1963.







c. The items described under the heading as "Components of Rubber and Rubber Products Used for Food Handling Equipment" are revised by changing the date in the column titled "Effective date of statute extended to --" from "January 1, 1962" to read "July 1, 1963".

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order, and I so find, since extensions of time, under certain conditions, for the effective date of the food additive amendment to the Federal Food, Drug, and Cosmetic Act were contemplated by Public Law 87-19 as a relief of restrictions on the food-processing industry.

**Effective date.** This order shall become effective on the date of signature.

(Sec. 6(c), Public Law 85-929, as amended sec. 2, Public Law 87-19; 72 Stat. 1788, as amended 75 Stat. 42; 21 U.S.C., note under sec. 342)

Dated: December 12, 1962.

GEO. P. LARRICK,  
Commissioner of Food and Drugs.

[F.R. Doc. 62-12422; Filed, Dec. 17, 1962;  
8:45 a.m.]

#### SUBCHAPTER C—DRUGS

### PART 146c—CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

#### Crude Chlortetracycline Oral Veterinary

Under the authority vested in the Secretary of Health, Education, and Welfare, by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625), the regulations for certification of chlortetracycline and chlortetracycline-containing drugs are amended by changing § 146c.219 (a) and (c) (1) (iii) to read as follows:

#### § 146c.219 Crude chlortetracycline oral veterinary.

(a) *Standards of identity, strength, quality, and purity.* Crude chlortetracycline oral veterinary is crude chlortetracycline with suitable and harmless diluents, with or without buffer substances and suspending and dispersing agents. It contains not less than 2 grams of chlortetracycline activity per pound, except it shall contain 100 grams of chlortetracycline activity per pound if it is intended for use in the treatment of psittacosis in psittacine birds (parrots, macaws, and cockatoos). Its moisture content is not more than 6 percent.

\* \* \* \* \*

(c) \* \* \*  
(1) \* \* \*

(iii) The statement "For oral veterinary use only" and if it is intended for

use in the treatment of psittacosis in psittacine birds, a statement to the effect that wet mash prepared with the drug should be discarded after 24 hours.

Notice and public procedure and delayed effective date are not necessary prerequisites to the promulgation of this order, and I so find, since crude chlortetracycline oral veterinary intended for treatment of psittacosis in psittacine birds has been found to be safe and efficacious for use under the conditions prescribed, and since the conditions pertinent to the certification of the drug have been complied with.

**Effective date.** This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463 as amended; 21 U.S.C. 357)

Dated: December 12, 1962.

GEO. P. LARRICK,  
Commissioner of Food and Drugs.

[F.R. Doc. 62-12471; Filed, Dec. 17, 1962;  
8:48 a.m.]

## Title 29—LABOR

### Chapter V—Wage and Hour Division, Department of Labor

### PART 615—MEN'S AND BOYS' CLOTHING AND RELATED PRODUCTS INDUSTRY IN PUERTO RICO

#### Wage Order

Pursuant to section 5 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 205), and by means of Administrative Order No. 567 (27 F.R. 9071), the Secretary of Labor appointed and convened Industry Committee No. 57-B. Administrative Order No. 567 referred to Industry Committee No. 57-B the question of the minimum wage rate or rates to be paid under section 6(c) of the Act to employees in the men's and boys' clothing and related products industry in Puerto Rico, as defined in that Order, and gave due notice of the hearing of the Committee, as provided in 29 CFR 511.2.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee filed with the Administrator a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938 (29 U.S.C. 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and General Order No. 45-A of the Secretary of Labor (15 F.R. 3290), the recommendations of Industry Committee No. 57-B are hereinafter published in this revision of 29 CFR Part 615.

Effective January 3, 1963, 29 CFR Part 615 is hereby revised to read as follows:

Sec.  
615.1 Definition.  
615.2 Wage Rates.

Sec.  
615.3 Notices.

**AUTHORITY:** §§ 615.1 to 615.3 issued under sec. 8, 52 Stat. 1064, as amended; 29 U.S.C. 208. Interpret or apply secs. 5, 6, 52 Stat. 1062, as amended; 29 U.S.C. 205, 206.

#### § 615.1 Definition.

The Men's and boys' clothing and related products industry in Puerto Rico is defined as follows: The manufacture from any material of men's and boys' clothing, furnishings, accessories, and related products: *Provided, however,* That the industry shall not include the manufacture of handmade straw hats, gloves, hosiery, footwear, belts (except fabric), sweaters, handkerchiefs, scarves, mufflers, or any product or activity included in the children's dress and related products industry in Puerto Rico, Part 610 of this chapter or in the women's and children's underwear and women's blouse industry in Puerto Rico, Part 609 of this chapter.

#### § 615.2 Wage rates.

The men's and boys' clothing and related products industry in Puerto Rico is divided into three classifications. Wages at rates not less than those prescribed below shall be paid under section 6(c) of the Fair Labor Standards Act of 1938 by every employer to each of his employees in each of the classifications in the industry who in any workweek is engaged in commerce or in the production of goods for commerce or is employed in an enterprise engaged in commerce or in the production of goods for commerce. Such classifications and minimum rates shall be:

(a) (1) Work clothing and separate trousers classification: 97 cents an hour.

(2) This classification is defined as the manufacture of men's, youths', and boys' work shirts, pants, and other work clothing and washable service apparel, and separate trousers and slacks.

(b) (1) General classification: 91 cents an hour.

(2) This classification is defined as the manufacture of all products included in the men's and boys' clothing and related products industry not included in the other classifications of this industry.

(c) (1) New coverage classification: 82.5 cents an hour.

(2) This classification is defined as all activities in the industry covered by Section 6 of the Fair Labor Standards Act only by reason of the Fair Labor Standards Amendments of 1961.

#### § 615.3 Notices.

Every employer subject to the provisions of § 615.2 shall post in a conspicuous place in each department of his establishment where employees subject to the provisions of § 615.2 are working such notices of this part as shall be prescribed from time to time by the Administrator of the Wage and Hour and Public Contracts Divisions of the United States Department of Labor and shall give such other notice as the Administrator may prescribe.



Signed at Washington, D.C., this 13th day of December 1962.

CLARENCE T. LUNDQUIST,  
Administrator.

[F.R. Doc. 62-12488; Filed, Dec. 17, 1962;  
8:49 a.m.]

## Title 31—MONEY AND FINANCE: TREASURY

### Chapter II—Fiscal Service, Department of the Treasury

[1962 Dept. Circular, Public Debt Series No. 22-62]

#### PART 340—REGULATIONS GOVERNING THE SALE OF TREASURY BONDS THROUGH COMPETITIVE BIDDING

DECEMBER 17, 1962.

Department Circular, Public Debt Series No. 22-62, dated December 17, 1962 (31 CFR 340) is hereby issued, effective immediately.

- Sec.
- 340.0 Authority for sale of Treasury bonds through competitive bidding.
  - 340.1 Public notice—description of bonds—terms of offer.
  - 340.2 Denominations and exchanges.
  - 340.3 Taxation.
  - 340.4 Acceptance as security for public deposits.
  - 340.5 Notice of intent to bid.
  - 340.6 Submission of bids.
  - 340.7 Deposits—retention—return.
  - 340.8 Acceptance of bids.
  - 340.9 Bids—revocations—rejections—postponements—reoffers.
  - 340.10 Payment for and delivery of bonds.
  - 340.11 Failure to complete transaction.
  - 340.12 Reservations as to terms of circular.

AUTHORITY: §§ 340.0 to 340.12 issued under R.S. 3706; 40 Stat. 288, 290, 1309; 48 Stat. 343; 50 Stat. 481; 31 U.S.C. 738a, 739, 752, 752a, 753, 754, 754a and 754b.

#### § 340.0 Authority for sale of Treasury bonds through competitive bidding.

(a) The Secretary of the Treasury may, from time to time, by public notice, offer Treasury bonds for sale and invite bids therefor. The bonds so offered and the bids made will be subject to the terms and conditions and the rules and regulations herein set forth, except as they may be modified in the public notice or notices issued by the Secretary in connection with particular offerings.<sup>1</sup> The bonds will be subject also to the general rules and regulations of the Treasury Department, now or hereafter prescribed, governing United States securities. They will be issued pursuant to the authority of the Second Liberty Bond Act, as amended.

(b) The terms "public notice," "notices," or "announcement" as used in this part mean the "Public Notice of Invitation to Bid" on Treasury bonds and any supplementary or amendatory notices or announcements with respect thereto, including, but not limited to any statement

<sup>1</sup> These regulations do not apply to Treasury bills, which are governed by Department Circular No. 418, Revised, and do not constitute a specific offering of bonds.

released to the press by the Secretary of the Treasury and notices sent to those who have filed notices of intent to bid or who have filed bids.

#### § 3340.1 Public notice—description of bonds—terms of offer.

When bonds are offered for sale through competitive bidding, bids therefor will be invited through the form of a public notice or notices issued by the Secretary of the Treasury. The notice or notices will either fix the coupon rate of interest to be borne by the bonds or prescribe the conditions under which bidders may specify the rate and will set forth the terms and conditions of the bonds, including maturities, call features, if any, and the terms and conditions of the offer, including the amount of the issue for which bids are invited, the date and closing hour for receipt of bids, and the date on which the bonds will be delivered and payment for any accepted bid must be completed. When so specified in the public notice, it shall be a condition of each bid that, if accepted by the Secretary of the Treasury, the bidder will make a bona fide reoffering to the investing public.

#### § 340.2 Denominations and exchanges.

Bearer bonds with interest coupons attached, and bonds registered as to principal and interest, will be available in denominations of \$500, \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000. Provisions will be made for the interchange of bonds of different denominations and of bearer and registered bonds, and for the transfer of registered bonds.

#### § 340.3 Taxation.

The income derived from the bonds will be subject to all taxes imposed under the Internal Revenue Code of 1954. The bonds will be subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but will be exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, or any of the possessions of the United States, or by any local taxing authority.

#### § 340.4 Acceptance as security for public deposits.

The bonds will be acceptable to secure deposits of public moneys.

#### § 340.5 Notice of intent to bid.

Any individual, or organization, syndicate, or other group which intends to submit a bid, must, when required by the public notice, give written notice of such intent on Form PD 3555 at the place and within the time specified in the public notice. The filing of such notice will not constitute a commitment to bid.

#### § 340.6 Submission of bids.

(a) *General.* Bids will be received only at the place specified and not later than the time designated in the public notice. Each bid must be submitted on the official form referred to in the public notice and should be enclosed and sealed in the special envelope provided by the Treasury Department. Forms and envelopes may be obtained from any Federal Reserve Bank or Branch or the

Bureau of the Public Debt, Treasury Department, Washington 25, D.C. Bids shall be irrevocable.

(b) *Bidding.* Bids, except noncompetitive bids when authorized, must be expressed as a percentage of the principal amount in not to exceed five decimals, e.g., 100.01038 percent. Provisions relating to the coupon rate of interest on the bonds, if not set forth in the public notice, will be made in a supplemental announcement. The public notice will indicate the timing of any such announcement. If the bidders are required to specify the coupon rate, each bidder shall specify a single coupon rate of interest, which shall be a multiple of  $\frac{1}{8}$  of 1 percent but not in excess of  $\frac{1}{4}$  percent. The Secretary of the Treasury may limit the premium above or the discount below par.

(c) *Group bids.* A syndicate or other group submitting a bid must act through a representative who must be a member of the group. The representative must warrant to the Secretary of the Treasury that he has all necessary power and authority to act for each member and to bind the members jointly and severally. In addition to whatever other data may be required by the Secretary of the Treasury, in the case of a syndicate, the representative must file, within one hour after the time for opening of bids, at the place specified in the public notice for receipt of bids a final statement of the composition of the syndicate membership and the amount of each member's underwriting participation.

#### § 340.7 Deposits—retention—return.

Each bid must be accompanied by a deposit in the amount specified in the public notice. The deposit of any successful bidder will be retained as security for the performance of his obligation and will be applied toward payment of the bonds. All other deposits will be returned immediately. No interest will be allowed on account of any deposits.

#### § 340.8 Acceptance of bids.

(a) *Opening of bids.* Bids will be opened at the time and place specified in the public notice.

(b) *Method of determining accepted bids.* The lowest basis cost of money<sup>2</sup> computed from the date of the bonds to the date of maturity will be used in determining successful bids.

(c) *Acceptance of successful bid.* The Secretary of the Treasury, or his representative, will notify any successful bidder of acceptance in the manner and form specified in the public notice.

#### § 340.9 Bids—revocations—rejections—postponements—reoffers.

The Secretary of the Treasury, in his discretion, may (a) revoke the public

<sup>2</sup> In cases where bidders are required to specify the coupon rate, the lowest basis cost of money will be determined by reference to a specially prepared table of bond yields, a copy of which will be made available to all prospective bidders upon written request to the Federal Reserve Bank of New York, or the Bureau of the Public Debt, Treasury Department, Washington 25, D.C. Straight-line interpolation will be applied if necessary.



## RULES AND REGULATIONS

notice of invitation to bid at any time before opening bids, (b) return all bids unopened either at or prior to the time specified for their opening, (c) reject any or all bids, (d) postpone the time for presentation and opening of bids, and (e) waive any immaterial or obvious defect in any bid. Any action the Secretary of the Treasury may take in these respects shall be final. In the event of a postponement, known bidders will be advised thereof and their bids returned unopened.

#### § 340.10 Payment for and delivery of bonds.

Payment for the bonds, including accrued interest, if any, must be made in immediately available funds on the date and at the place specified in the invitation. Delivery of bonds under this section will be made at the risk and expense of the United States at such place or places in the United States as may be provided in the invitation. Interim receipts, if necessary, will be issued pending delivery of the definitive bonds.

#### § 340.11 Failure to complete transaction.

If any successful bidder shall fail to pay in full for the bonds on the date and at the place specified in the invitation, the money deposited by or in behalf of such bidder shall be forfeited to the Treasury Department.

#### § 340.12 Reservations as to terms of circular.

The Secretary of the Treasury reserves the right, at any time, or from time to time, to amend, repeal, supplement, revise or withdraw all or any of the provisions of this part.

[SEAL] DOUGLAS DILLON,  
Secretary of the Treasury.

[F.R. Doc. 62-12554; Filed, Dec. 17, 1962;  
10:43 a.m.]

## Title 33—NAVIGATION AND NAVIGABLE WATERS

### Chapter II—Corps of Engineers, Department of the Army

#### PART 203—BRIDGE REGULATIONS

##### Grand River and Spring Lake Outlet, Mich.

Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.641 governing the operation of certain bridges across the tributaries of the Great Lakes is hereby amended with respect to paragraph (f) by redesignating subparagraphs (3), (4) and (5) as (5), (6) and (7), respectively, and adding new subparagraphs (3) and (4) to govern the operation of the Grand Trunk Western Railroad Company's bridges across Grand River and Spring Lake Outlet, Michigan, effective 30 days after publication in the FEDERAL REGISTER, as follows:

#### § 203.641 Great Lakes tributaries; bridges where constant attendance of draw tenders is not required.

(f) The bridges to which this section applies, and the special regulations applicable in each case, are as follows:

(3) Grand River, Mich.; The Grand Trunk Western Railroad Company bridge at Grand Haven. During the winter months from January 1 to March 1, at least 24 hours' advance notice required.

(4) Spring Lake Outlet, Mich.; The Grand Trunk Western Railroad Company bridge at Ferrysburg. During the winter months from January 1 to March 1, at least 24 hours' advance notice required.

(5) Black River at Port Huron, Mich. [Redesignated]

(6) Calumet River, Chicago, Ill. [Redesignated]

(7) Chicago River, North Branch, Chicago, Ill. [Redesignated]

[Regs., Dec. 3, 1962, 285/111 (Great Lakes)—ENGOW-ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

J. C. LAMBERT,  
Major General, U.S. Army,  
The Adjutant General.

[F.R. Doc. 62-12450; Filed, Dec. 17, 1962;  
8:45 a.m.]

#### PART 203—BRIDGE REGULATIONS

##### Shark River, N.J., and Lake Worth, Fla.

1. Pursuant to the provisions of Section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.215 is hereby amended by deleting the Ocean Avenue Bridge and regulations pertaining thereto from subdivision (ii) of paragraph (j) (2), effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 203.215 Navigable streams flowing into Raritan Bay (except Raritan River and Arthur Kill), the Shrewsbury River and its tributaries, and all inlets on the Atlantic Ocean including their tributaries and canals between Sandy Hook and Bay Head, N.J.; bridges.

(j) \* \* \*  
(2) \* \* \*

(ii) Except as otherwise provided in subdivisions (iii) and (iv) of this subparagraph from May 15, to September 30, inclusive, on Saturdays, Sundays, Memorial Day, Independence Day and Labor Day, between the hours of 9:00 a.m. and 9:00 p.m., and on weekdays, between the hours of 4:00 p.m. and 7:00 p.m., the lift span of the Route 71, the New York and Long Branch Railroad Company and the Route 35 bridges shall not be required to open except at half-hourly intervals on the hour and half-hour, for those vessels or other watercraft waiting to pass through the draws, provided that when once opened for the passage of any vessel or craft, the said bridge or bridges shall remain open sufficiently long to permit the pas-

sage of all vessels or craft which may be engaged in passing or which may be presenting themselves for passage.

[Regs., Dec. 3, 1962, 285/111 (Shark River, N.J.)—ENGOW-ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

2. Pursuant to the provisions of Section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.439a is hereby prescribed to govern the operation of the Singer Island Bridge across the Intracoastal Waterway in Lake Worth, Florida, effective 30 days after publication in the FEDERAL REGISTER, as follows:

#### § 203.439a Lake Worth (Intracoastal Waterway), Fla.; Singer Island Bridge, at Riviera Beach.

(a) The owner or of agency controlling the bridge shall not be required to open the drawspan between the hours of 7:30 a.m. and 9:30 a.m., and between the hours of 4:30 p.m. and 6:30 p.m., daily except on the hour and half-hour when the bridge shall be opened to allow all accumulated vessels to pass, and except as provided in paragraph (b) of this section.

(b) The draw shall be opened to allow the passage of a vessel in distress or a commercial tow at any time upon sounding by the vessel of four blasts of a whistle or horn.

(c) The owner or of agency controlling the bridge shall place conspicuously on both sides of the bridge signs of such size that they can be easily read at any time, clearly indicating the nature of the regulations.

[Regs., Nov. 29, 1962, 285/111 (Lake Worth, Fla.)—ENGOW-ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

J. C. LAMBERT,  
Major General, U.S. Army,  
The Adjutant General.

[F.R. Doc. 62-12449; Filed, Dec. 17, 1962;  
8:45 a.m.]

## Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

### Chapter I—Veterans Administration PART 21—VOCATIONAL REHABILITATION AND EDUCATION

#### Extension of Beginning and Ending Dates for Education and Training

A new § 21.2904 is added to read as follows:

§ 21.2904 Extension of the beginning and ending dates for education and training under chapter 33 and of the ending date of the 5-year period of eligibility for war orphans' educational assistance under chapter 35, for veterans and eligible persons called to active duty as reservists or whose period of active service was extended after July 30, 1961, pursuant to Executive Order 10957, dated August 10, 1961.

(a) Provisions of the law. (1) Section 1613 of title 38 United States Code, is amended to read:



(a) No education or training shall be afforded an eligible veteran under this chapter beyond eight years after either his discharge or release from active duty or the end of his basic service period, whichever is earlier, except that any veteran who is eligible to initiate a program of education or training by reason of the second sentence of section 1612(a) of this title shall be permitted to pursue, subject to the other provisions of this chapter, such program for a period of not more than five years after the date of initiation thereof; but in no event shall education or training be afforded under this chapter after January 31, 1965.

(b) In computing the three-year period referred to in section 1612(a) of this title and the eight- and five-year periods referred to in subsection (a) of this section, the Administrator shall disregard in the case of any eligible veteran any period of active duty performed by such veteran, before August 1, 1962, pursuant to (1) a call or order thereto issued to him as a Reserve after July 30, 1961, or (2) an extension of an enlistment, appointment, or period of duty with the Armed Forces pursuant to section 2 of Public Law 87-117.

(2) Section 1712 of title 38 is amended to read:

(a) No change;

(1) and (2) No change;

(3) if the death of the parent from whom eligibility is derived occurs after the eligible person's eighteenth birthday but before his twenty-third birthday, then (unless paragraph (4) applies) such period shall end five years after the death of such parent;

(4) if he serves on duty with the Armed Forces as an eligible person after his eighteenth birthday but before his twenty-third birthday, then such period shall end five years after his first discharge or release from such duty with the Armed Forces (excluding from such five years all periods during which the eligible person served on active duty before August 1, 1962, pursuant to (A) a call or order thereto issued to him as a Reserve after July 30, 1961, or (B) an extension of an enlistment, appointment, or period of duty with the Armed Forces pursuant to section 2 of Public Law 87-117); however, in no event shall such period be extended beyond his thirty-first birthday by reason of this paragraph; and,

(5) (A) if he is enrolled in an educational institution regularly operated on a quarter or semester system and such period ends during the last half of a quarter or semester, such period shall be extended to the end of the quarter or semester; or

(B) if he is enrolled in an educational institution operated other than on a quarter or semester system and such period ends during the last half of the course, such period shall be extended to the end of the course, or until nine weeks have expired, whichever first occurs.

(b) No change.

(3) Section 2 of Public Law 86-236 is amended to read:

(a) In the case of any individual who is an eligible person within the meaning of section 1701(a)(1) of title 38, United States Code, solely by virtue of the amendments made by this Act, and who has reached his eighteenth birthday but has not reached his twenty-third birthday on the date of enactment of this Act, the period referred to in section 1712 of title 38, United States Code, shall not end with respect to such individual until the expiration of the five-year period which begins on the date of enactment of this Act.

(b) In computing the five-year period prescribed in subsection (a), the Administrator of Veterans' Affairs shall disregard all periods of active duty performed by such individual

before August 1, 1962, pursuant to a call or order thereto issued to him as a Reserve after July 30, 1961, or pursuant to an extension of an enlistment, appointment, or period of duty with the Armed Forces pursuant to section 2 of Public Law 87-117.

(4) Section 5 of Public Law 86-785 is amended to read:

(a) In the case of any individual who is an "eligible person" within the meaning of section 1701(a)(1) of title 38, United States Code, solely by virtue of the amendments made by this Act, and who is above the age of seventeen years and below the age of twenty-three years on the date of enactment of this Act, the period referred to in section 1712 of title 38, United States Code, shall not end with respect to such individual until the expiration of the five-year period which begins on the date of enactment of this Act.

(b) In computing the five-year period prescribed in subsection (a), the Administrator of Veterans' Affairs shall disregard all periods of active duty performed by such individual before August 1, 1962, pursuant to a call or order thereto issued to him as a Reserve after July 30, 1961, or pursuant to an extension of an enlistment, appointment, or period of duty with the Armed Forces pursuant to section 2 of Public Law 87-117.

(5) Paragraph (26) of section 101 of title 38, United States Code is amended to read:

(26) The term "Reserve" means a member of a reserve component of one of the Armed Forces.

(b) *Procedures.* The following procedures will be followed in establishing new initiation and terminal deadline dates for persons who are determined to have been called or ordered to active duty or whose period of service was extended after July 30, 1961, under Executive Order 10957.

(1) *Initiation deadline date.* (i) The law makes provision for the establishment of a new 3-year initiation deadline date for those eligible veterans who had not initiated training under Chapter 33 and for those who had commenced training but whose 3-year initiation deadline date had not passed at the time of their call to or extension of active duty under Executive Order 10957. For the latter group, the new deadline is significant in that it will become the critical date on or before which a change of program that is not in normal progression may be made. The law makes no provision for the establishment of a new initiation deadline date for those veterans whose 3-year period had already passed before their call to or extension of active duty.

(ii) A veteran's new initiation deadline date will be that date which is determined by adding to the date of his discharge or release from active duty the number of months and days intervening the date of his call to or extension of active duty under Executive Order 10957 and his previous deadline date.

(iii) An eligible veteran who had not commenced training and whose original initiation deadline date passed while he was on active duty pursuant to Executive Order 10957, but who commenced an approved program of education or training "on his own" after his release from active duty and prior to a new deadline date established under Public Law 87-815, may be considered to have timely

commenced training under Chapter 33 and education and training allowance may be authorized for him effective as of the date of his commencement of the approved program, provided all other requirements of the law are met.

(2) *Terminal deadline date.* (i) No provision is made in Public Law 87-815 to extend education or training beyond January 31, 1965. Under no condition will a new terminal deadline be established beyond that date.

(ii) A new terminal deadline date will be established upon entrance or reen-trance into training for an eligible veteran who was called to active duty or whose active duty was extended pursuant to Executive Order 10957. The new terminal deadline date will be that date which is determined by adding to the date of the veteran's discharge or release from active duty the number of months and days intervening the date of his call to or extension of active duty and his previous terminal deadline date.

(iii) Appropriate adjustment will be made in a similar manner for those eligible veterans whose 5-year terminal deadline dates have been previously established in accordance with § 21.2013 (a) (3).

(3) *Five-year period of eligibility under Chapter 35.* A new ending date for eligibility under Chapter 35 will be established for an eligible person who served on active duty with the Armed Forces after his 18th but before his 23d birthday and who was called to active duty under Executive Order 10957. The new ending date of such person's period of eligibility will be that date which is determined by adding to the date of the eligible person's discharge or release from active duty the number of months and days intervening the date of his call to active duty and the ending date of his original period of eligibility. In no instance may educational assistance be afforded beyond the eligible person's 31st birthday or after the exhaustion of the months and days of his entitlement. (Instruction 2, Public Law 87-815)

(72 Stat. 1114; 38 U.S.C. 210)

This regulation is effective December 18, 1962.

[SEAL]

W. J. DRIVER,  
Deputy Administrator.

[F.R. Doc. 62-12470; Filed, Dec. 17, 1962; 8:48 a.m.]

## Title 39—POSTAL SERVICE

### Chapter I—Post Office Department

#### CANADA AND MEXICO

#### Revised Postage Rates

Concurrently with domestic postage rate changes, which become effective January 7, 1963, pursuant to Public Law 87-793, approved October 11, 1962, the following changes will be made in the postage rates to Canada and Mexico. These rates are in accordance with the Postal agreements in effect between the Post Office Department and the Postal Administrations of Canada and Mexico:



## RULES AND REGULATIONS

## A. Surface mail:

|                                             |                                                                                              |
|---------------------------------------------|----------------------------------------------------------------------------------------------|
| Letters.....                                | 5 cents per ounce.                                                                           |
| Post cards:                                 |                                                                                              |
| Single .....                                | 4 cents each.                                                                                |
| Reply-paid .....                            | 8 cents (4 cents each half).                                                                 |
| Printed matter:                             |                                                                                              |
| Regular printed matter.....                 | 4 cents first 2 ounces, 2 cents each additional ounce or fraction.                           |
| Samples of merchandise.....                 | 4 cents first 2 ounces, 2 cents each additional ounce or fraction. Minimum charge, 10 cents. |
| 8-ounce merchandise packages (Canada only). | 4 cents first 2 ounces, 2 cents each additional ounce or fraction. Minimum charge, 10 cents. |

## B. Airmail:

|                  |                                                                                                                           |
|------------------|---------------------------------------------------------------------------------------------------------------------------|
| Letters .....    | 8 cents per ounce.                                                                                                        |
| Post cards:      |                                                                                                                           |
| Single .....     | 6 cents each.                                                                                                             |
| Reply-paid ..... | 12 cents (8 cents on message half and 4 cents on reply half. No provision for payment of airmail postage on return half). |

Postal Union "other articles" 8 cents per ounce.

(Canada only).

(Includes all printed matter categories, samples of merchandise, matter for the blind, and commercial papers, as well as 8-ounce merchandise packages.)

Postage rates for other categories of mail to Canada and Mexico, not mentioned above, remain unchanged. Canadian or Mexican international reply coupons presented for exchange on and after January 7, 1963, will be exchangeable at the rate of 5 cents each in postage.

The appropriate amendment necessary to codify the foregoing rates into Title 39, Code of Federal Regulations will be published in the FEDERAL REGISTER at a later date.

(R.S. 161, as amended; 5 U.S.C. 22, 39 U.S.C. 501, 505)

LOUIS J. DOYLE,  
General Counsel.

[F.R. Doc. 62-12469; Filed, Dec. 17, 1962;  
8:48 a.m.]

## UNITED STATES

## New Postage Rates and Fees

Pursuant to Public Law 87-793, approved October 11, 1962, the following domestic postage rates and fees will be effective January 7, 1963, with the exception of the \$30 third class bulk mailing fee which will be chargeable January 1, 1963.



| Mail class                                                                                           | Postage rate unit       | Present rate          | First year<br>(effective<br>1/7/63), rate | Second year<br>(1964), rate    | Third year<br>(1965), rate     |
|------------------------------------------------------------------------------------------------------|-------------------------|-----------------------|-------------------------------------------|--------------------------------|--------------------------------|
| First class:                                                                                         |                         |                       |                                           |                                |                                |
| Letters.....                                                                                         | Per ounce.....          | 4 cents               | 5 cents                                   | 5 cents                        | 5 cents                        |
| Drop letters.....                                                                                    | do.....                 | 3 cents               | 4 cents                                   | 4 cents                        | 4 cents                        |
| Cards.....                                                                                           | Per card.....           | 3 cents               | 4 cents                                   | 4 cents                        | 4 cents                        |
| Airmail:                                                                                             |                         |                       |                                           |                                |                                |
| Letters.....                                                                                         | Per ounce.....          | 7 cents               | 8 cents                                   | 8 cents                        | 8 cents                        |
| Cards.....                                                                                           | Per card.....           | 5 cents               | 6 cents                                   | 6 cents                        | 6 cents                        |
| Parcel post.....                                                                                     | Per pound.....          | By zones <sup>1</sup> | ( <sup>2</sup> )                          | ( <sup>2</sup> )               | ( <sup>2</sup> )               |
| Second class:                                                                                        |                         |                       |                                           |                                |                                |
| In-county:                                                                                           |                         |                       |                                           |                                |                                |
| Free mail.....                                                                                       | do.....                 | Free                  | 1 cent                                    | 1 cent                         | 1¼ cents                       |
|                                                                                                      | Minimum per pc..        | Free                  | ¼ cent                                    | ¼ cent                         | ¼ cent                         |
| Pound-rate matter.....                                                                               | Per pound.....          | 1 cent                | Present rates                             | Present rates                  | 1¼ cents                       |
|                                                                                                      | Minimum per pc..        | ¼ cent                |                                           |                                |                                |
| Per-copy rate matter.....                                                                            | Per copy.....           | 1 cent or 2 cents     | Present rates                             | Present rates                  | Present rates                  |
| Outside county:                                                                                      |                         |                       |                                           |                                |                                |
| Nonprofit publications.....                                                                          | Per pound.....          | 1½ cents              | 1.6 cents                                 | 1.7 cents                      | 1.8 cents                      |
| Classroom publications:                                                                              | Minimum per pc..        | ¼ cent                | ¼ cent                                    | ¼ cent                         | ¼ cent                         |
| Editorial.....                                                                                       | Per pound.....          | 1½ cents              | 60% of regular rates                      | 60% of regular rates           | 60% of regular rates           |
| Advertising:                                                                                         |                         |                       |                                           |                                |                                |
| Zones 1 and 2.....                                                                                   | do.....                 | 1½ cents              |                                           |                                |                                |
| Zone 3.....                                                                                          | do.....                 | 2 cents               |                                           |                                |                                |
| Zone 4.....                                                                                          | do.....                 | 3 cents               |                                           |                                |                                |
| Zone 5.....                                                                                          | do.....                 | 4 cents               |                                           |                                |                                |
| Zone 6.....                                                                                          | do.....                 | 5 cents               |                                           |                                |                                |
| Zone 7.....                                                                                          | do.....                 | 6 cents               |                                           |                                |                                |
| Zone 8.....                                                                                          | do.....                 | 7 cents               |                                           |                                |                                |
|                                                                                                      | Minimum per pc..        | ¼ cent                |                                           |                                |                                |
| Regular publications:                                                                                |                         |                       |                                           |                                |                                |
| Editorial.....                                                                                       | Per pound.....          | 2½ cents              | 2.6 cents                                 | 2.7 cents                      | 2.8 cents                      |
| Advertising:                                                                                         |                         |                       |                                           |                                |                                |
| Zones 1 and 2.....                                                                                   | do.....                 | 3 cents               | 3.4 cents                                 | 3.8 cents                      | 4.2 cents                      |
| Zone 3.....                                                                                          | do.....                 | 4 cents               | 4.4 cents                                 | 4.8 cents                      | 5.2 cents                      |
| Zone 4.....                                                                                          | do.....                 | 6 cents               | 6.4 cents                                 | 6.8 cents                      | 7.2 cents                      |
| Zone 5.....                                                                                          | do.....                 | 8 cents               | 8.4 cents                                 | 8.8 cents                      | 9.2 cents                      |
| Zone 6.....                                                                                          | do.....                 | 10 cents              | 10.4 cents                                | 10.8 cents                     | 11.2 cents                     |
| Zone 7.....                                                                                          | do.....                 | 12 cents              | 12 cents                                  | 12 cents                       | 12 cents                       |
| Zone 8.....                                                                                          | do.....                 | 14 cents              | 14 cents                                  | 14 cents                       | 14 cents                       |
|                                                                                                      | Minimum per pc..        | ¼ cent                | 0.6 cent <sup>3</sup>                     | 0.8 cent <sup>3</sup>          | 1 cent <sup>3</sup>            |
| Advertisers' proof sheets.....                                                                       | Applicable pound rates. |                       | Discontinued                              |                                |                                |
| Transient.....                                                                                       | 1st 2 ounces.....       | 2 cents               | 4 cents                                   | 4 cents                        | 4 cents                        |
|                                                                                                      | Each additional oz.     | 1 cent                | 1 cent                                    | 1 cent                         | 1 cent                         |
| Application fees:                                                                                    |                         |                       |                                           |                                |                                |
| Original entry—circulation not more than 2,000.....                                                  |                         | \$25                  | \$30                                      | \$30                           | \$30                           |
| Original entry—circulation 2,001 to 5,000.....                                                       |                         | \$50                  | \$60                                      | \$60                           | \$60                           |
| Original entry—circulation 5,001 and over.....                                                       |                         | \$100                 | \$120                                     | \$120                          | \$120                          |
| News-agent registry.....                                                                             |                         | \$20                  | \$25                                      | \$25                           | \$25                           |
| Reentry because of change in title, frequency of issue, office of publication, or other reasons..... |                         | \$10                  | \$15                                      | \$15                           | \$15                           |
| Additional entry.....                                                                                |                         | \$10                  | \$15 (\$50 if in zones 3 to 8)            | \$15 (\$50 if in zones 3 to 8) | \$15 (\$50 if in zones 3 to 8) |
| Refund of one-half original entry fee when application denied.....                                   |                         |                       | Discontinued                              |                                |                                |
| Controlled circulation.....                                                                          | Per pound.....          | 12 cents              | 12¼ cents                                 | 13 cents                       | 13½ cents                      |
|                                                                                                      | Minimum per pc..        | 1 cent                | 1 cent                                    | 1 cent                         | 1 cent                         |
| Third class:                                                                                         |                         |                       |                                           |                                |                                |
| Single piece.....                                                                                    | 1st 2 ounces.....       | 3 cents               | 4 cents                                   | 4 cents                        | 4 cents                        |
|                                                                                                      | Each additional oz.     | 1½ cents              | 2 cents                                   | 2 cents                        | 2 cents                        |
| Key and identification devices.....                                                                  | Each 2 ounces.....      | 5 cents               | 6 cents                                   | 6 cents                        | 6 cents                        |
| Bulk rate:                                                                                           |                         |                       |                                           |                                |                                |
| Regular:                                                                                             |                         |                       |                                           |                                |                                |
| Circulars, etc.....                                                                                  | Per pound.....          | 16 cents              | 18 cents                                  | 18 cents                       | 18 cents                       |
|                                                                                                      | Minimum per pc..        | 2½ cents              | 2¾ cents                                  | 2¾ cents                       | 2¾ cents                       |
| Books, catalogs, etc.....                                                                            | Per pound.....          | 10 cents              | 12 cents                                  | 12 cents                       | 12 cents                       |
|                                                                                                      | Minimum per pc..        | 2½ cents              | 2¾ cents                                  | 2¾ cents                       | 2¾ cents                       |
| Nonprofit:                                                                                           |                         |                       |                                           |                                |                                |
| Circulars, etc.....                                                                                  | Per pound.....          | 16 cents              | 9 cents                                   | 9 cents                        | 9 cents                        |
|                                                                                                      | Minimum per pc..        | 1¼ cents              | 1¼ cents                                  | 1¼ cents                       | 1¼ cents                       |
| Books, catalogs, etc.....                                                                            | Per pound.....          | 10 cents              | 6 cents                                   | 6 cents                        | 6 cents                        |
|                                                                                                      | Minimum per pc..        | 1¼ cents              | 1¼ cents                                  | 1¼ cents                       | 1¼ cents                       |
| Annual bulk mailing fee.....                                                                         | Calendar year.....      | \$20                  | \$30                                      | \$30                           | \$30                           |
| Odd size, minimum.....                                                                               | Per piece.....          | 3½ cents              | Discontinued                              |                                |                                |
| Congressional Record mailed at Washington, D.C.....                                                  | Per copy.....           | 1 cent                | Discontinued                              |                                |                                |
| Fourth class:                                                                                        |                         |                       |                                           |                                |                                |
| Educational materials.....                                                                           | 1st pound.....          | 9 cents               | 9½ cents                                  | 10 cents                       | 10 cents                       |
|                                                                                                      | Each additional lb.     | 5 cents               | 5 cents                                   | 5 cents                        | 5 cents                        |
| Library materials.....                                                                               | 1st pound.....          | 4 cents               | Present rates                             | Present rates                  | Present rates                  |
|                                                                                                      | Each additional lb.     | 1 cent                |                                           |                                |                                |
| Permit imprint fee.....                                                                              | Application.....        | \$10                  | \$15                                      | \$15                           | \$15                           |

<sup>1</sup> Air parcel post law requires payment of not less than first-class rates for first class sent by air.<sup>2</sup> Present air parcel post schedule plus 8 cents per piece. First-class matter above 8 ounces, 64 cents for first 8 ounces plus 5 cents for each additional ounce, or the published air parcel post rate if higher.<sup>3</sup> The ¼-cent charge is retained for publications mailing fewer than 5,000 copies per issue outside the county of publication. When the advertising portion of any one issue does not exceed 5 percent, the charge will be .55, .65 and .75 of a cent.

The appropriate amendments necessary to codify the foregoing rates into Title 39, Code of Federal Regulations, will be published in the FEDERAL REGISTER at a later date.

LOUIS J. DOYLE,  
General Counsel.



# Proposed Rule Making

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[ 21 CFR Part 121 ]

### FOOD ADDITIVES

#### Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 984) has been filed by AviSun Corporation, Post Road, Marcus Hook, Pennsylvania, proposing the issuance of a regulation to provide for the safe use of resinous and polymeric coatings as the food-contact surface of polypropylene film. The coatings are formulated from substances identified in § 121.2514(b) (except subparagraph (3) (xxxi) and (xxxii)), and the following substances:

*n*-Butyl acetate.  
Hexane.  
Methylethyl ketone.  
Toluene.

Dated: December 11, 1962.

WINTON B. RANKIN,  
*Assistant Commissioner  
of Food and Drugs.*

[F.R. Doc. 62-12464; Filed, Dec. 17, 1962;  
8:47 a.m.]

[ 21 CFR Part 121 ]

### FOOD ADDITIVES

#### Notice of Filing of Petition

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 896) has been filed by Monsanto Chemical Company, 800 North Lindbergh Boulevard, St. Louis 66, Missouri, proposing the issuance of a regulation to provide for the safe use of butyl benzyl phthalate as a plasticizer in polyvinyl chloride, polyvinyl acetate, polyvinylidene chloride, and nitrocellulose

employed as articles or components of articles intended for use in packaging, handling, storing, or transporting food.

Dated: December 11, 1962.

WINTON B. RANKIN,  
*Assistant Commissioner  
of Food and Drugs.*

[F.R. Doc. 62-12506; Filed, Dec. 17, 1962;  
8:48 a.m.]

## FEDERAL COMMUNICATIONS COMMISSION

[ 47 CFR Parts 31, 35 ]

### TELEPHONE COMPANIES, WIRE-TELEGRAPH AND OCEAN-CABLE CARRIERS AND RADIO-TELEGRAPH CARRIERS

#### Uniform Systems of Accounts; Order Extending Time for Filing Comments

In the matter of amendment of Parts 31 and 35 of the Commission's rules (Uniform Systems of Accounts for Class A and Class B Telephone Companies and for Wire-Telegraph and Ocean-Cable Carriers, respectively) concerning accounting for investment credits made available by the Revenue Act of 1962. Possible like amendment of the Uniform Systems of Accounts for Class C Telephone Companies and for Radio-telegraph Carriers (Parts 33 and 34 of the Rules, respectively), Docket No. 14850 (RM-377) (RM-381).

The Commission has before it information to the effect that if it were to extend the time within which comments in the above-captioned proceeding would be received it might expect to receive comments from interested and informed persons who might not otherwise file comments.

It appearing that it would be of assistance to the Commission to receive the views of as many persons as is reasonably possible;

*It is ordered.* This 13th day of December 1962, pursuant to § 0.258(c) of the Commission's rules, that the time for filing comments in the above-captioned proceeding is extended from December 26, 1962, to January 28, 1963, and that reply comments may be filed on or before February 18, 1963.

Released: December 13, 1962.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
*Acting Secretary.*

[F.R. Doc. 62-12479; Filed, Dec. 17, 1962;  
8:49 a.m.]

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[ 14 CFR Part 1245 ]

### PATENT WAIVER REGULATIONS

#### Notice of Hearing

Notice is hereby given that the public hearing on the proposed revisions to NASA Patent Waiver Regulations (Title 14, Chapter V, Part 1245, Subpart 1: 24 F.R. 8788-8790, October 29, 1959, and 27 F.R. 8584, August 28, 1962) published at 27 F.R. 10460-10462, October 26, 1962, will be continued on January 28, 1963, at 9:30 a.m., in Room 60012, Federal Office Building No. 6, 400 Maryland Avenue SW., Washington, D.C., at which time and place oral presentation of comments and suggestions concerning these regulations may be made.

In order that an agenda for the public hearing may be prepared, each person desiring to make oral presentation is requested to notify the General Counsel of the National Aeronautics and Space Administration of the approximate length of time which he wishes to speak. Such notice should be furnished not later than January 21, 1963.

JOHN A. JOHNSON,  
*General Counsel.*

[F.R. Doc. 62-12472; Filed, Dec. 17, 1962;  
8:48 a.m.]



# Notices

## DEPARTMENT OF JUSTICE

### Office of Alien Property

S. A. MELODI AND EDIZIONI SUVINI  
ZERBONI

#### Notice of Intention To Return Vested Property

Pursuant to section 32(f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

#### Claimant, Claim No., Property, and Location

S. A. Melodi, Galleria del Corso 4, Milan, Italy, Claim No. 37623; \$8,460.19 in the Treasury of the United States.

Edizioni Suvini Zerboni, Galleria del Corso 4, Milan, Italy; Claim No. 58756, Vesting Order No. 2735; \$253.62 in the Treasury of the United States.

Executed at Washington, D.C., on December 6, 1962.

For the Attorney General.

[SEAL]

PAUL V. MYRON,  
Deputy Director,  
Office of Alien Property.

[F.R. Doc. 62-12467; Filed, Dec. 17, 1962;  
8:48 a.m.]

## DEPARTMENT OF COMMERCE

### Bureau of International Programs

[BIP Case No. 310]

HYDROCARBON RESEARCH, INC.,  
ET AL.

#### Consent Denial and Probation Order

In the matter of Hydrocarbon Research, Inc., Percival C. Keith, 115 Broadway, New York 6, New York; Hydrocarbon Mineraloel, G.m.b.H., Fuerstentwall 23, Duesseldorf, Germany; Hydrocarbon Engineering, S.A.R.L., 44 Avenue des Champs-Elysees, Paris 8e, France; Respondents.

By letters dated March 5, 1962, as amended April 19, 1962, the Director, Investigations Staff, Bureau of International Programs, Department of Commerce, charged Hydrocarbon Research, Inc. of New York, New York (hereinafter referred to as HRI), Percival C. Keith, President of HRI (hereinafter referred to as Keith), three other officials of HRI, Hydrocarbon Mineraloel, G.m.b.H. of Duesseldorf, Germany, a firm which at the time of these events was, but no longer is affiliated with HRI (hereinafter referred to as HM) and Hydrocarbon Engineering S.A.R.L. of Paris, France, a wholly owned subsidiary of HRI (here-

inafter referred to as HE), with violations of the Export Control Act of 1949, as amended, and the Export Regulations issued thereunder. The charging letters in substance alleged that the respondents, in violation of the Export Regulations, used unpublished technical data of United States origin, and exported such data and products manufactured abroad therefrom to Rumania, in connection with their contract to design, construct, and put into operation an oil refining complex in Rumania.

Respondents, each represented by counsel, filed answers to the charging letters denying the charges and alleging several affirmative defenses. Subsequently a number of pre-hearing conferences were held, a number of motions were heard, and a part of the evidence was presented at an oral hearing before the Compliance Commissioner.

Thereafter, respondents through their counsel discussed the issues with officials of the Department of Commerce, and pursuant to § 382.10 of the Export Regulations, by agreement with the Director, Investigations Staff, proposed that a consent order substantially as contained herein be entered against them.

In accord with the Export Regulations, the consent proposals were submitted to the Compliance Commissioner for consideration together with the charging letters, respondents' answers and statements of facts, the transcripts and evidence contained in the record, and other supplemental data. The Compliance Commissioner, having carefully reviewed all materials, approved the proposals and submitted his report and recommendations to the undersigned Director, Office of Export Control.

After reviewing and considering the record and all of the materials in this case, and the Compliance Commissioner's report and recommendations, I hereby make the following findings of fact:

1. In 1959 HRI contracted to design and construct and thereafter did design and construct an oil refining complex at Ploesti, Rumania (hereinafter referred to as the Rumanian plant). HM and HE acted as subcontractors of HRI.

2. Some of the drawings, specifications, operating instructions, and other written materials used and furnished by HRI in the construction of the aromatics extraction and fractionation unit of the Rumanian plant contained or were based upon certain details as to process design, structural dimensions and specifications, operating conditions, process controls, and operating procedures and instructions which had previously been used by HRI, HE and HM in the design, construction and operation of a comparable French plant.

3. Plans and other documents for the aromatics extraction and fractionation unit of the French plant were in the first instance prepared and engineered in the

United States by a United States engineering firm, and were not made generally available and were not themselves in published form. As provided in § 385.2 of the Export Regulations, those documents did, therefore, in each and every respect constitute unpublished U.S. technical data. The use by HRI, HM, and HE of the original unpublished U.S. technical data in the French plant, the subsequent use of the redrawn French plant documents by United States and foreign technicians employed by respondents to design the Rumanian plant, the commingling thereby of the unpublished U.S. technical data with other published (or unpublished) technical data of whatever origin, did not serve to deprive the original data for the French plant of their status as unpublished technical data, nor of their United States origin, when incorporated into the design of the Rumanian plant. Both the furnishing of the final plans and other documents to the Rumanians and the construction and operation of the Rumanian plant through the use of these documents involved in a number of instances an unauthorized use, export, and re-export of unpublished technical data of United States origin and the unauthorized export of products made abroad therefrom.

4. HRI sent certain technicians abroad for the purpose of supplying, and they did supply, technical assistance in the design of the Rumanian plant. The application by such persons of their United States-origin know-how and experience constituted an unauthorized use and export of unpublished technical data of United States origin, when such data were transmitted to Rumania.

5. HRI, through HM, hired a United States firm producing heaters (no longer in existence) to design specialized heaters for the Rumanian plant. Plans and specifications therefor constituting unpublished technical data of United States origin were exported from the United States. These documents were revised by U.S. and foreign technicians employed by HRI, HE, and HM. The heaters produced from the final designs were made in Rumania and elsewhere abroad. The furnishing of the final design documents and the heaters themselves which were constructed therefrom to Rumania constituted, respectively, an unauthorized use, export, and re-export of unpublished technical data of United States origin and an unauthorized export of products made abroad therefrom.

6. Each such use, export and re-export to Rumania of unpublished technical data of United States origin, and of products made abroad from such data, was made without obtaining from the Department of Commerce a prior specific written authorization, as required by the Export Regulations.

7. Keith was primarily responsible for the conduct which resulted in violations of the Export Regulations. He consulted



the Department of Commerce specifically and at length concerning the applicability of the regulations to the proposed Rumanian transaction and was informed *inter alia* that HRI could engage in the transaction only if HRI, its associates and any HRI personnel who might go abroad in connection with it, were to use no unpublished United States technical data as then defined in § 385.2 of the Export Regulations. Notwithstanding the aforesaid consultations and the language of the technical data regulations and without further consultation with the Department of Commerce to confirm his views, Keith construed unpublished technical data in the engineering field to be limited to fundamental, secret know-how held by persons or companies, so that any information or documents which a competent, experienced engineer thought he could furnish or prepare with his own mind using well-recognized engineering principles, texts, technical articles, and patents, would be published technical data as described in the Export Regulations. Accordingly, after a review of the published literature thereon, he informed the engineering personnel of HRI, HE and HM that with respect to the aromatics extraction and fractionation unit of the Rumanian plant, the only unpublished aspects involved the design of the "internals" of the diethylene glycol solvent extractor in the unit and that hence only these essential details would constitute unpublished technical data subject to the Export Regulations. At Keith's instruction, HM sublet a contract with a British engineering firm to perform work to obtain design data for this part of the extractor.

From the foregoing, I have reached the following conclusions:

A. The respondents violated the export regulations by the unauthorized export and re-export of unpublished technical data of United States origin, and the export of products manufactured abroad therefrom, to Rumania, a Soviet bloc destination, which were used in the design, construction, and putting into operation and operation of the Rumanian plant.

B. Keith, as the principal executive officer of HRI and the guiding force in the Rumanian project, bears the principal responsibility for these violations. He seriously misconstrued the technical data regulations, which specifically distinguish between the kinds of technical data considered to be generally available in published form and therefore freely exportable to all destinations, and those which are unpublished or not generally available in published form and therefore not freely exportable to Soviet bloc destinations. Under the circumstances his failure to undertake to verify or confirm his unilateral interpretation of the export regulations was at least negligent.

C. The other three individuals named in the charging letters were officers or employees of HRI who acted pursuant to Keith's general instructions and his determination of the meaning of the export regulations, insofar as they participated in the violations.

D. HRI was the principal contractor with the Rumanians and bears responsibility with Keith for his acts, and those of the other respondents which stemmed from Keith's behavior.

E. HM and HE, insofar as they participated in the violations of the Export Regulations in this transaction, acted pursuant to Keith's information to them about the applicability of the Export Regulations to the Rumanian project.

Now, after considering the materials submitted to me with the consent proposal and the report and recommendations of the Compliance Commissioner, and taking into account among other factors (1) that this is the first case involving construction of the technical data regulations; (2) that it does not appear that the violations in this case, however negligent, can clearly be proved to have been willful; (3) that a temporary denial order has been in effect against respondents since June 15, 1961; and being of the opinion that the proposed sanctions are fair and are calculated to achieve effective enforcement of the law; and to further the foreign policy of the United States and to aid in fulfilling its international responsibilities; and to exercise vigilance over exports from the standpoint of their significance to the national security (and foreign policy objectives) of the United States:

*It is hereby ordered, that:*

I(1) Respondent HRI, its officers, directors, employees, agents, successors and assigns, and respondent Keith, individually, are hereby denied all privileges of participating directly or indirectly in any manner, capacity, or respect in any transaction which involves any commodity or technical data subject to the export regulations to be exported or re-exported directly or indirectly to any Subgroup A (Sino-Soviet bloc) destination as defined in the export regulations, Cuba and Poland (including Danzig), except that the project authorized for Poland may be completed.

(2) This denial of export privileges shall continue for the duration of export controls or five years from the date of this order, whichever is less.

II(1) For a period of two years from the date of this order, all transactions of respondent HRI, its officers, directors, employees, agents, successors and assigns, and respondent Keith, individually, which involve directly or indirectly in any manner, capacity, or respect commodities or technical data subject to the export regulations, are hereby made subject to surveillance by the Bureau of International Programs or any successor agency.

(2) Said surveillance shall include and require submission to the Bureau of each written or oral proposal, offer, contract and material change thereto, during the course of each such transaction. Such submission shall be made as promptly as possible after preparation in the case of documents, and in no event later than simultaneously with their export or re-export as defined in the export regulations, to others. In the case of oral communications, such submission shall be

made before each such communication, or as promptly as possible thereafter, by written statement. Further, the Bureau may request and said persons shall submit any additional document, report, or other writing or information when deemed necessary by the Bureau for its enforcement purposes.

(3) The Bureau may for good cause order the suspension, annulment, stopping or modification of any transaction in whole or in part, including the return of commodities and technical data (a) whenever the aforesaid proposals, offers, contracts and material changes thereto are not submitted as required, (b) whenever the Bureau has reason to believe that an export control violation has been or may be potentially involved therein, or (c) pending the receipt by the Bureau of additional information or documents needed to determine whether any such violation has been or may be involved therein.

(4) The information and documents received by the Bureau pursuant to this surveillance provision shall be held confidential and utilized only for its administrative law enforcement purposes.

III. For a period of six months from the date of this order, except as has been or may be specifically authorized by the Bureau of International Programs, respondent Keith, individually, is denied all privileges of participating directly or indirectly in any manner, capacity, or respect in any transaction which involves any commodity or technical data subject to the Export Regulations.

IV(1) For a period of three years from the date of this order respondent HRI, its successors and assigns, and respondent Keith, individually, are placed on probation. The conditions of said probation are that said firms and individual shall not knowingly violate any of the provisions of this order to which they are specifically subject, the Export Control Act of 1949, as amended, or any of the regulations, orders, or licenses issued thereunder.

(2) In the event that it be found by the Director, Office of Export Control, Bureau of International Programs, or such other official as may at that time be exercising his responsibility, upon investigation, that any such individual or firm has knowingly violated a condition of said probation, such official may, as provided in § 382.16 of the Export Regulations, enter and publish a supplemental order against such person which may revoke all outstanding validated licenses to which such person is a party, and which may, for a period up to and including one year, deny to such person any and all privileges of participating in any transaction which involves directly or indirectly in any manner, capacity, or respect any commodity or technical data subject to the Export Regulations.

V(1) Without limitation of the generality of the language, the term participating in a transaction subject to the Export Regulations means participating in any transaction which involves any commodity or technical data exported or to be exported from the United States or those products covered by the Export Regulations made abroad from such



technical data or commodities. It shall include participation, either in the United States or abroad (a) as a party or as a representative of a party to any export license application or re-export authorization, (b) in the preparation or filing of any export license application or re-export authorization or document to be submitted therewith, (c) in the obtaining or using of any validated or general export license or other export control documents, (d) in the carrying on of negotiations with respect to, and in the ordering, buying, selling, using, delivering, disposing of, or receiving in any foreign country of any such commodity, technical data, or product, and (e) in the financing, forwarding, transporting, or the performance of any other services with respect to any such commodity, technical data, or product.

(2) Respondent HRI, its officers, directors, employees, agents, successors and assigns, and respondent Keith, individually, shall not be deemed to have participated in a transaction prohibited by this order unless they knew or possessed information from which they should have known that it was transaction prohibited by this order, or unless they failed to make a reasonable effort to ascertain that it was not such a prohibited transaction.

VI. No individual, firm, corporation or business organization, whether in the United States or elsewhere, shall, without prior disclosure to and specific authorization from the Bureau of International Programs, directly or indirectly, do any act or participate in any transaction which is prohibited to HRI and Keith by Paragraph I or to Keith by Paragraphs I and III of this order, either in association with, or on behalf of, or for the benefit of respondents HRI or Keith, respectively.

VII. The charges against the other respondents named in the charging letter are hereby dismissed.

Dated: December 12, 1962.

FORREST D. HOCKERSMITH,  
Director,  
Office of Export Control.

[F.R. Doc. 62-12451; Filed, Dec. 17, 1962;  
8:45 a.m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration MALATHION

#### Notice of Exemption for Investigational Use

Notice is given that the Commissioner of Food and Drugs, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(i), 72 Stat. 1788; 21 U.S.C. 348(i)), and in accordance with authority delegated to him by the Secretary of Health, Education, and Welfare (25 F.R. 8625), has at the request of the Agricultural Marketing Service,

United States Department of Agriculture, Beltsville, Maryland, issued a temporary exemption to the United States Department of Agriculture, from the requirements of section 409 of the Federal Food, Drug, and Cosmetic Act as it pertains to 20 tons of raisins containing malathion as the result of investigational use of malathion by qualified experts, in the production of the raisins. The Commissioner has concluded that such exemption is consistent with the public health.

Included as a condition of granting this temporary exemption is the requirement that the raisins contain not in excess of 5 parts per million of malathion as the result of the use of malathion as a component of the paper upon which the raisins were dried.

Dated: December 10, 1962.

GEO. P. LARRICK,  
Commissioner of Food and Drugs.

[F.R. Doc. 62-12463; Filed, Dec. 17, 1962;  
8:47 a.m.]

## ATOMIC ENERGY COMMISSION

[Docket No. 50-192]

### UNIVERSITY OF TEXAS

#### Notice of Extension of Completion Date

Please take notice that the Atomic Energy Commission has issued an Order extending to April 1, 1963 the latest completion date specified in Construction Permit No. CPRR-70 for the Construction of the TRIGA-1 type nuclear reactor on The University of Texas Campus in Austin, Texas.

Copies of the Commission's Order and of the application amendments by The University of Texas are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Germantown, Md., this 6th day of December 1962.

For the Atomic Energy Commission.

SAUL LEVINE,  
Chief, Test and Power Reactor  
Safety Branch, Division of Li-  
censing and Regulation.

[F.R. Doc. 62-12448; Filed, Dec. 17, 1962;  
8:45 a.m.]

## CIVIL AERONAUTICS BOARD

[Docket 14041]

### MOHAWK AIRLINES, INC., "USE IT OR LOSE IT" INVESTIGATION

#### Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 8, 1963, at 10 a.m., e.s.t., in Room 911, Universal Building, Connecticut and Florida Avenues NW., Washington, D.C., before Examiner Barron Fredricks.

Dated at Washington, D.C., December 12, 1962.

[SEAL]

FRANCIS W. BROWN,  
Chief Examiner.

[F.R. Doc. 62-12478; Filed, Dec. 17, 1962;  
8:49 a.m.]

## FEDERAL COMMUNICATIONS COMMISSION

[FCC 62-1294]

### AM GROWTH PROBLEMS

#### Public Conference

DECEMBER 12, 1962.

Any interested party who wishes to participate in the conference scheduled for January 7 and 8, 1963, on the problems presented by the Commission's policies as to the assignment of AM broadcasting stations is invited to write to the Chief, Broadcast Bureau, who will handle scheduling of oral presentations at the conference.

As stated in the Commission's public notice of November 20, 1962, the conference, which will be held in the Commission's meeting room, will be public.

The conference will open on January 7 with a presentation by the National Association of Broadcasters. Thereafter, on January 8, other interested parties will be given an opportunity to make oral presentations to the Commission and submit written statements and documentation to the Commission and its staff.

Participants will be free to address themselves to what they conceive to be the problems generated by the Commission's policies in this area insofar as they affect the public interest.

Although the length of oral presentation of necessity will be limited, there will be no limit on the length of written presentations. Participants should submit 15 copies of such written presentations when they appear before the Commission on January 8. Additional copies should be provided if participants desire to make their presentations immediately available to the press.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL]

BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 62-12480; Filed, Dec. 17, 1962;  
8:49 a.m.]

[Docket Nos. 14714, 14715; FCC 62M-1644]

### DESERT BROADCASTING CO., INC., AND MANUEL MARTINEZ

#### Order Continuing Prehearing Conference

In re applications of Desert Broadcasting Company, Inc., Docket No. 14714, File No. BMPH-6746; for additional time to construct Radio Station KANT-FM, Lancaster, California; Desert Broadcasting Company, Inc. (assignor), and Manuel Martinez (assignee), Docket No. 14715, File No. BAPH-271; for assignment of construction permit for Radio



Station KANT-FM, Lancaster, California.

In the absence of the Hearing Examiner: *It is ordered*, This 11th day of December 1962, that the further pre-hearing conference in the above-entitled proceeding, presently scheduled to be held at 2:00 p.m., December 12, 1962, is continued to a date to be specified by the Hearing Examiner.

Released: December 12, 1962.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 62-12481; Filed, Dec. 17, 1962;  
8:49 a.m.]

[Docket No. 8716 etc.; FCC 62R-166]

# GREENWICH BROADCASTING CORP. ET AL.

## Memorandum Opinion and Order Amending Issues

In re applications of the Greenwich Broadcasting Corporation, Greenwich, Connecticut, Docket No. 8716, File No. BP-6315; Blair A. Walliser, tr/as Milford Broadcasting Co., Milford, Connecticut, Docket No. 14574, File No. BP-14106; James Stolcz, Shelton, Connecticut, et al., Docket No. 14576, File No. BP-14355, et al.; for construction permits.

1. James Stolcz<sup>1</sup> has filed a petition on August 13, 1962, to enlarge the issues in this proceeding by including the following:

To determine whether Blair A. Walliser, tr/as Milford Broadcasting Company [Co.] is qualified financially to construct and operate the station which he proposes.

2. This proceeding involves nine (9) applications for new standard broadcast stations which the Commission's Corrected Order of designation, released April 3, 1962 (FCC 62-293; Mimeo No. 16921) found to involve varying degrees of interlinking interference. The Commission found Blair A. Walliser, tr/as Milford Broadcasting Co. (Walliser) to be legally, technically, financially and otherwise qualified.

3. Petitioner notes that in addition to its instant application for Milford, Connecticut, Walliser also has pending an application for a new standard broadcast station to operate 1 kw, daytime at New Milford, Connecticut (File No. BP-1367, Docket Nos. 14166, et al.); that Walliser owns interests in other existing stations in Poughkeepsie, New York (WEOK), Chicopee, Massachusetts (WACE) and Newark, New Jersey (WJRZ-AM-FM).

4. Petitioner points out that Walliser's application for Milford indicates that \$58,221 cash will be required to construct and operate the station for an initial

period of three months and that cash in the amount of \$53,503 will be required for the New Milford proposal; hence, a total of \$111,724 will be required for the two proposed stations. As of November 13, 1961, Walliser shows cash in excess of \$15,000 and listed securities in excess of \$180,000. Petitioner states that in view of this showing, he had no reason to question Walliser's financial qualifications when the Milford application was filed, but subsequent events (discussed, infra) now cast strong doubts on Walliser's financial qualifications. These subsequent events are relied upon as good cause, within the meaning of § 1.141 of the rules, for the late filing of the petition.

5. As to these subsequent events, petitioner alleges that on November 3, 1961, an application was filed (File No. BTC-3891) for the transfer of control of NTA Radio Broadcasting Company, licensee of Stations WNTA and WNTA-FM (now WJRZ and WJRZ-FM), Newark, New Jersey, from National Telefilm Associates, Inc., to Bergen Broadcasting Corporation and Bergen FM, Inc., for the price of \$2,500,000; that the latter corporations are subsidiaries of Communications Industries Corporation, a corporation in which Walliser is Secretary and a stockholder; that to finance the acquisition of the Newark stations, Walliser has subscribed to \$45,000 worth of additional stock in the parent corporation; and that the purchase of the Newark stations was consummated on March 20, 1962. Petitioner alleges that these transactions have reduced from \$195,000 to \$150,000 the assets available to Walliser to finance his pending broadcast proposals. As to the remaining \$150,000, petitioner alleges that the so-called market crash of May 28, 1962, and the continued recession in the securities market, cast grave doubts on the value placed on the security holdings by Walliser. Attached to the petition is an affidavit by a stockbroker quoting the current prices as of August 8, 1962, on the securities listed by Walliser. Using the affiant's quotations, the petitioner shows that the securities held and relied on by Walliser had dropped in value from "in excess of \$180,000" to \$85,825. On the basis of this analysis and re-evaluation of Walliser's liquid asset position, petitioner contends that Walliser has remaining, at best, \$55,825 with which to fulfill his commitments to the Milford proposal (\$58,221) and to the New Milford proposal (\$53,503).

6. In opposing the petition, Walliser alleges that the petition is neither timely filed, nor does it state the fact situation correctly; that it should not have taken petitioner from May 28, 1962, the date of the so-called market crash, until August 13, 1962, to determine that the drop in the securities market was not a "momentary phenomenon"; that no significant change has taken place in the stock market since June 15, 1962. Walliser also argues that the petition should be denied on its merits because petitioner's allegations are not accurate as of now. Attached to the opposition is an affidavit by Walliser, dated August 29, 1962, indicating current liquid assets over all

current liabilities in excess of \$140,000 and a net worth "in excess of \$250,000." A total of \$355,000 in liabilities is listed. He further states that his financial requirements for the Milford and New Milford stations are no longer \$111,000; that his commitment for New Milford will be reduced from \$53,500 to \$13,000 upon approval of a merger agreement filed in connection with that application " (see Joint Request and associated papers filed (or to be filed) in August, 1962 in Docket Nos. 14166, et al.) "; thus, he concludes his financial commitments for the two proposals are reduced to approximately \$71,000.

7. It is evident from the allegations in the opposition that Walliser's financial affairs have undergone a substantial change since he filed his application. While Walliser asserts that he is now financially qualified, the information submitted with his opposition is lacking in detail, and his assertion is based, at least in part, upon collateral executory arrangements. In addition, as is pointed out by petitioner in his reply pleading, it is not clear from the showing made by Walliser in his opposition whether any of his securities have been pledged as collateral for his relatively substantial outstanding obligations, and, if so, the extent to which these securities are in fact available to finance his proposed operations. None of the securities on which Walliser now relies have been identified. Petitioner has shown that the securities on which Walliser originally relied have vacillated greatly in value, and under these circumstances we think it was incumbent upon Walliser to support his current allegations as to his financial qualifications by identifying the securities with which he would finance his proposed operation. In view of all of these uncertainties, it is the Review Board's conclusion that the question of Walliser's financial qualifications should be resolved on the basis of an evidentiary record.

8. We do not agree with Walliser that petitioner has been so lacking in diligence that he did not have good cause for the late filing of his petition. For the reasons indicated in the previous paragraph, we would in any event enlarge the issues on the basis of the allegations made in the pleadings before us, and hence the matter of petitioner's diligence is not critical to the disposition of petitioner's request.

Accordingly, it is ordered, This 11th day of December 1962 that the petition to enlarge issues, filed August 13, 1962, by James Stolcz, is granted; and

It is further ordered, That the issues in this proceeding are enlarged by the addition of the following issue: "To determine whether Blair A. Walliser, tr/as Milford Broadcasting Company [Co.] is financially qualified to construct and operate the station which he proposes."

Released: December 12, 1962.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 62-12482; Filed, Dec. 17, 1962;  
8:49 a.m.]

<sup>1</sup>Subsequent to the filing of the petition, the petitioner's application was dismissed by Order of the Acting Chief Hearing Examiner (FCC 62M-1609, released December 6, 1962). Inasmuch as the allegations before us relate to Walliser's qualifications, the dismissal of the petitioner's application does not render moot the matters alleged in the petition before us.



[FCC 62-1274]

**SUNBEAM TELEVISION CORP.****Application for Renewal of License**

At a session of the Federal Communications Commission held at its offices in Washington, D.C., on the 5th day of December 1962;

The Commission having under consideration (1) its decision in Biscayne Television Corp., 31 FCC 237, 20 R.R. 714 (1961), in which it awarded a construction permit for a new television broadcast station to operate on Channel 7, Miami, Florida, to Sunbeam Television Corporation, but stated that "any license issued upon completion of the construction hereinabove permitted shall be for a period of four months and no longer," and (2) the temporary authorization issued to Sunbeam Television Corporation, Miami, Florida, on December 5, 1962; and

It appearing that the Commission in its decision released August 3, 1961, proposed to grant to Sunbeam Television Corporation, Miami, Florida, a four months license upon completion of construction of a television station on Channel 7; that Sunbeam Television Corporation will have operated pursuant to the above-mentioned temporary authorization and/or regular license for a period of four months on April 12, 1963; and that the Commission intended to permit the filing of new competing applications for Channel 7 at the expiration of four months of licensed operation by Sunbeam; and

It further appearing that since Sunbeam Television Corporation will not have operated for a full license term, it cannot use the Commission's composite week in furnishing information on program performance;

*It is ordered*, That pursuant to § 1.328 (c) of the Commission's rules<sup>1</sup> Sunbeam Television Corporation shall file its application for renewal of license on Channel 7, Miami, Florida, by April 12, 1963; and

*It is further ordered*, That in the preparation of Section IV of its application, Sunbeam Television Corporation shall use a composite week to be specified by the Commission at a later date; and

*It is further ordered*, That Channel 7, Miami, Florida, be available for the filing of applications for construction permits for new television broadcast stations beginning April 12, 1963, and ending June 12, 1963, the Commission's rules to the contrary, if any, notwithstanding.

Released: December 7, 1962.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 62-12484; Filed, Dec. 17, 1962; 8:49 a.m.]

<sup>1</sup>Section 1.328(c) of the rules provides that, "Whenever the Commission regards an application for renewal of license as essential to the proper conduct of a hearing or investigation, and specifically directs that it be filed by a date certain, such application shall be filed within the time thus specified. If the licensee fails to file such application within the prescribed time, the hearing or investigation shall proceed as if such renewal application had been received."

[Docket No. 14733; FCC 62M-1645]

**HUDSON VALLEY BROADCASTING CORP. (WEOK)****Order Continuing Prehearing Conference**

In re application of Hudson Valley Broadcasting Corporation (WEOK), Poughkeepsie, New York, Docket No. 14733, File No. BP-14590; for construction permit.

In the absence of the Hearing Examiner: *It is ordered*, This 11th day of December 1962, that the further prehearing conference in the above-entitled proceeding, presently scheduled to be held at 9:00 a.m., December 12, 1962, is continued to a date to be specified by the Hearing Examiner.

Released: December 12, 1962.

FEDERAL COMMUNICATIONS

COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 62-12483; Filed, Dec. 17, 1962; 8:49 a.m.]

[Docket No. 14577; FCC 62M-1643]

**TRIANGLE PUBLICATIONS, INC. (WNHC-TV)****Order Continuing Hearing**

In re application of Triangle Publications, Inc. (WNHC-TV) (Radio and Television Division), New Haven, Connecticut, Docket No. 14577, File No. BPCT-2897; for construction permit.

In the absence of the Hearing Examiner: *It is ordered*, This 11th day of December 1962, that the further hearing in the above-entitled proceeding, presently scheduled at 10:00 a.m., December 12, 1962, is continued to a date to be specified by the Hearing Examiner.

Released: December 12, 1962.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 62-12485; Filed, Dec. 17, 1962; 8:49 a.m.]

[Docket No. 14856, FCC 62M-1647]

**WESTERN BROADCASTERS, INC.****Order Continuing Prehearing Conference**

In re application of Western Broadcasters, Inc., Cheyenne, Wyoming, Docket No. 14856, File No. BP-13343; for construction permit.

Upon the Hearing Examiner's own motion: *It is ordered*, This 11th day of December 1962, that the prehearing conference in this proceeding, presently scheduled to be convened at 9:00 a.m., January 2, 1963, is continued to 9:00 a.m., January 7, 1963.

Released: December 12, 1962.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 62-12486; Filed, Dec. 17, 1962; 8:49 a.m.]

[Docket Nos. 14882-14892]

**WESTERN UNION TELEGRAPH CO. AND CALIFORNIA INTERSTATE TELEPHONE CO.****Designating Applications for Consolidated Hearing on Stated Issues**

In re applications of The Western Union Telegraph Company for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Pasadena, California, Docket No. 14882, File No. 702-C1-P-63; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Montana Mines, California, Docket No. 14883, File No. 703-C1-P-63; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service at Goldstone, California, Docket No. 14884, File No. 704-C1-P-63; for modification of the construction permit, to authorize additional facilities, for Station KNJ71 in the Domestic Public Point-to-Point Microwave Radio Service at Bailey Peak, California, Docket No. 14885, File No. 705-C1-MP-63; for modification of the construction permit, to authorize additional facilities, for Station KNJ72 in the Domestic Public Point-to-Point Microwave Radio Service at Sierra Peak, California, Docket No. 14886, File No. 706-C1-MP-63; for modification of the construction permit, to authorize additional facilities, for station KNJ73 in the Domestic Public Point-to-Point Microwave Radio Service at Shadow Mountain, California, Docket No. 14887, File No. 707-C1-MP-63; California Interstate Telephone Company, for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service near Fort Irwin, California, Docket No. 14888, File No. 1363-C1-P-63; for a construction permit to establish new facilities in the Domestic Public Point-to-Point Microwave Radio Service near Goldstone, California, Docket No. 14889, File No. 1364-C1-P-63; for a construction permit to add new facilities to Station KMQ76 in the Domestic Public Point-to-Point Microwave Radio Service at Kramer Hills, California, Docket No. 14890, File No. 1365-C1-P-63; for a construction permit to add new facilities to Station KMQ77 in the Domestic Public Point-to-Point Microwave Radio Service at Victorville, California, Docket No. 14891, File No. 1366-C1-P-63; for a construction permit to add new facilities to Station KMQ78 in the Domestic Public Point-to-Point Microwave Radio Service near Crestline, California, Docket No. 14892, File No. 1367-C1-P-63.

*Memorandum opinion and order.* The Commission, by its Chief of the Common Carrier Bureau acting under delegation of authority pursuant to Section 0.262 of the Commission's Rules, has before it (1) six applications filed by The Western Union Telegraph Company (hereinafter called Western Union) for construction permits to establish new facilities at Pasadena, Montana Mines and Goldstone, California and for modification of current construction permits, to authorize additional facilities, for Stations



KNJ71, KNJ72 and KNJ73, at Bailey Peak, Sierra Peak and Shadow Mountain, California, all in the Domestic Public Point-to-Point Microwave Radio Service; (2) five applications filed by California Interstate Telephone Company (hereinafter called California Interstate) for construction permits to establish new facilities near Fort Irwin and Goldstone, California, and to add new facilities to Stations KMQ76, KMQ77 and KMQ78, at or near Kramer Hills, Victorville and Crestline, California, all in the Domestic Public Point-to-Point Microwave Radio Service; (3) a "Petition To Deny Applications", filed by California Interstate on September 20, 1962, wherein four of the Western Union applications (File Nos. 703/704-C1-P-63 and 705/707-C1-P-63) are opposed; (4) an "Opposition Of The Western Union Telegraph Company To Petition To Deny Applications", filed by Western Union on October 10, 1962; and (5) a "Reply To Opposition", filed by California Interstate on October 22, 1962.

**Preliminary statement.** 1. On August 13, 1962, Western Union applied for three construction permits to establish new facilities and for the modification of three outstanding construction permits to add facilities at sites located in the State of California, all to operate on common carrier microwave frequencies. The proposed broad-band facilities are allegedly designed to satisfy an order for service from the Jet Propulsion Laboratory of California Institute of Technology, a participant in the national aeronautics and space program.

2. On September 20, 1962, California Interstate filed five applications (amended November 20, 1962) for construction permits to establish new common carrier microwave facilities in the State of California. Although several different intermediary points of communication were chosen, the California Interstate applications are designed to partially satisfy the same requirements of Jet Propulsion Laboratory and are therefore competitive with some or all of the Western Union applications.

3. It appears that the proposals made by California Interstate would require interconnection with certain communications common carrier facilities, as modified by the Western Union proposal, in order to satisfy the service requirements of the alleged prospective customer.

4. Although California Interstate filed a petition to deny four of the applications of Western Union, it appears to be lacking in the specific allegations required for full compliance with section 309(d) of the Communications Act of 1934, as amended, and § 21.27(c) of the Commission's rules and regulations. However, the relief sought in the said petition is effectively granted by the action hereinafter taken. Consequently, the unverified opposition by Western Union and the reply thereto by California Interstate do not warrant detailed consideration as pleadings. Nevertheless, the representations con-

tained in the said documents are treated as part of the applications and have been fully considered in that posture.

5. Under the circumstances stated above, it appears that the two aforesaid sets of applications request authorizations to establish facilities which are arranged to serve one specific demand for communications common carrier services and that the said proposals are mutually exclusive. Furthermore, each applicant has made allegations regarding the public convenience, interest and necessity which require full and complete examination.

**Disposition.** 6. Accordingly, in the light of our conclusions in paragraphs 3, 4 and 5 above, and in order to carry out the intent of Congress with respect to section 309(e) of the Communications Act of 1934, as amended;

*It is ordered*, That pursuant to the provisions of the Communications Act of 1934, as amended, the above entitled applications are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine, on a comparative basis, the facts with respect to the proposed facilities, including the rates, charges, practices, classifications, regulations, personnel and services of each applicant;

(b) To determine, on a comparative basis, the need for the proposed services, and the nature and extent of any benefits to the public which would accrue as a result of authorizing the proposed facilities and services;

(c) To determine, on a comparative basis, whether, and to what extent, any disadvantages may accrue to the public if the proposed facilities and services are authorized;

(d) To determine whether it is necessary and desirable in the public interest to establish connections between the proposed facilities of California Interstate and Western Union, to establish a through route and charges applicable thereto and the division of such charges, and to provide facilities and regulations for operating such through routes within the meaning of section 201(a) of the Communications Act of 1934, as amended; and, if so, what connections, routes, charges, divisions, facilities and regulations should be established;

(e) To determine, in the light of the evidence adduced on all the foregoing issues, whether or not, and under what conditions, the public interest, convenience or necessity will be served by a grant of any of the subject applications.

7. *It is further ordered*, That the burden of proof on each of the issues specified in paragraph No. 6 herein is placed on the applicants, so far as same relates to their respective applications; and

8. *It is further ordered*, That the hearing herein, upon the issues specified in paragraph No. 6 above, shall be held at the Commission's offices in Washington, D.C. at a time and place to be hereafter announced; and

9. *It is further ordered*, That the Chief, Common Carrier Bureau, is made a party to the proceeding herein; and

10. *It is further ordered*, That the parties desiring to participate herein shall file their appearances in accordance with § 1.140 of the Commission's rules.

Adopted: December 11, 1962.

Released: December 13, 1962.

FEDERAL COMMUNICATIONS  
COMMISSION,

[SEAL] BEN F. WAPLE,  
Acting Secretary.

[F.R. Doc. 62-12487; Filed, Dec. 17, 1962;  
8:49 a.m.]

## FEDERAL MARITIME COMMISSION

### SIX OCEAN CARRIERS ACTIVE IN THE TRADE BETWEEN THE UNITED STATES AND PERSIAN GULF, GULF OF ADEN AND ARABIAN SEA

#### Notice of Filing of Agreement

Notice is hereby given that the following described agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733; 75 Stat. 763; 46 U.S.C. 814):

Agreement 8900, between Concordia Line, "Hansa" Lines, Hellenic Lines, Ltd., Nedlloyd Line, Kulukundis Lines, Ltd., and Kulukundis Maritime Industries, Inc., provides for discussion and agreement with respect to "rates, charges, classifications, practices and related tariff matters" in the trade from United States Gulf and Atlantic ports to "ports in the range between Salala and Arabian/Persian Gulf", subject to the exercise of independent action with respect to any such rate, etc., previously agreed upon, or upon which no agreement has been reached, on forty-eight hours notice to other parties to the arrangement. The agreement also provides; that the parties will file individual tariffs; for the admission of new parties; for resignation on thirty days' written notice to other parties; and that the agreement, and any modification, shall not become effective prior to the approval of the Federal Maritime Commission.

Interested parties may inspect this agreement and obtain copies thereof at the Bureau of Foreign Regulation, Federal Maritime Commission, Washington, D.C., and may submit within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: December 13, 1962.

By order of the Federal Maritime Commission.

THOMAS LISI,  
Secretary.

[F.R. Doc. 62-12474; Filed, Dec. 17, 1962;  
8:48 a.m.]



## FEDERAL POWER COMMISSION

[Docket No. CP63-88]

TEXAS EASTERN TRANSMISSION  
CORP.Notice of Application and Date of  
Hearing

DECEMBER, 11, 1962.

Take notice that on October 8, 1962, Texas Eastern Transmission Corporation (Applicant), Texas Eastern Building, Houston, Texas, filed in Docket No. CP63-88 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of an additional 1,020 Mcf of firm natural gas per day to National Gas and Oil Corporation (National), Newark, Ohio, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that National requires the additional volumes of natural gas in order to meet its anticipated increased requirements resulting from an increase in residential and commercial customers occasioned by the buildup of a new industry in National's service area.

The application indicates that no new facilities will be required for the proposed service.

The proposed sale will be made pursuant to Applicant's FPC Gas Rate Schedule DCQ-C.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on January 22, 1963, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 9, 1963. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

JOSEPH A. GUTRIDE,  
Secretary.

[F.R. Doc. 62-12452; Filed, Dec. 17, 1962;  
8:45 a.m.]

[Docket No. CP63-89]

KANSAS-NEBRASKA NATURAL GAS  
CO., INC.Order Waiving Notice Provisions of  
Rules of Practice and Procedure and  
Fixing Date of Hearing

DECEMBER 11, 1962.

On October 8, 1962, as amended on November 23, 1962 Kansas-Nebraska Natural Gas Company, Inc. (Applicant), Phillipsburg, Phillips County, Kansas, filed in Docket No. CP63-89 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by statutory merger and operation of all of the facilities of North Central Gas Company (North Central) and of Western Gas Fuel Company (Western) and to perform all acts and services now being made by North Central and Western, to the extent that such facilities, acts, services and sales are subject to the jurisdiction of the Commission, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application indicates that Applicant owns and operates a natural gas system used in the purchase of natural gas in Wyoming and in the production, purchase and gathering of natural gas in Kansas, Nebraska, Oklahoma and Colorado and in the transmission, sale at wholesale and retail distribution of natural gas in Kansas, Nebraska and Colorado. North Central's facilities include approximately 270 miles of transmission pipeline and distribution facilities in certain communities in Wyoming and Nebraska. Western distributes natural gas in six communities in Nebraska. Applicant states that North Central and Western are subsidiaries of Applicant. Applicant owns 77 percent of the outstanding capital stock of North Central and states that it has a contract to purchase the remaining 23 percent from the present owner thereof, Northern Utilities Company. Applicant further states that it owns all of the outstanding stock of Western.

The application shows that North Central and Western will be liquidated and merged into Applicant pursuant to the applicable laws of the States of Wyoming, Kansas and Nebraska and that as the surviving corporation Applicant will continue all services presently being rendered by North Central and Western. Therefore, Applicant states that there will be no interruption or abandonment of service now being rendered by said companies. The application indicates that all assets, properties and franchises of Central and Western will be taken over by Applicant, subject to all liabilities and obligations of Central and Western and the rights of all creditors thereof and that Applicant will assume the indebtedness of said companies.

Applicant states that the use of existing interconnections between Applicant and North Central will permit the operation of the two systems as a single system, thus achieving more efficient operations. Further, Applicant states the

subject merger will enable it to secure new Wyoming gas reserves. The application also indicates that simplification and increased flexibility of certain corporate operations and the attainment of certain administrative economies will be realized as a result of the proposed merger.

The agreement of merger, dated September 18, 1962, between Applicant, North Central and Western provides that the said merger is to become effective December 31, 1962. In order that the proposed merger can be effected on said date, it appears that a shorter period of notice of hearing than that provided for by § 1.19(b) of the Commission's rules of practice and procedure should be ordered.

The Commission finds: A shorter period of notice of hearing of the above-described application than that required by § 1.19(b) of the Commission's rules of practice and procedure is reasonable and consistent with the public interest.

The Commission orders:

(A) This order will constitute notice of the above-described application which is on file with the Commission and open for public inspection.

(B) The provisions of § 1.19(b) of the Commission's rules of practice and procedure relating to notice or order fixing the time and place for the initial convening of a hearing be and the same is hereby waived as to the hearing of the above-described application.

(C) This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations and to that end:

Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on December 19, 1962, at 9:30 a.m., e.s.t., in a Hearing Room of the Federal Power Commission, 441 G Street NW., Washington, D.C., concerning the matters involved in and the issues presented by such application: *Provided, however*, That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30(c) (1) or (2) of the Commission's rules of practice and procedure. Under the Procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before December 17, 1962. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

By the Commission.

JOSEPH H. GUTRIDE,  
Secretary.

[F.R. Doc. 62-12453; Filed, Dec. 17, 1962;  
8:45 a.m.]



## SECURITIES AND EXCHANGE COMMISSION

[File No. 70-4089]

### PRESTON OIL CO. AND COLUMBIA GAS SYSTEM, INC.

#### Notice of Proposed Intrastate Issuance, Sale, and Acquisition of Installment Notes and Common Stock and Proposed Increase in Authorized Capital Stock of Subsidiary Company

DECEMBER 12, 1962.

Notice is hereby given that The Columbia Gas System, Inc. ("Columbia"), 120 East 41st Street, New York 17, New York, a registered holding company, and its wholly-owned nonutility subsidiary company, The Preston Oil Company ("Preston"), have filed a joint application with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6 (b), 9, and 10 thereof as applicable to the proposed transactions. All interested persons are referred to the joint application, on file at the office of the Commission, for a statement of the transactions therein proposed which are summarized below.

Preston proposes, on or prior to March 31, 1964, to issue and sell, and Columbia proposes to acquire, 40,000 shares of Preston's common stock and \$4,450,000 principal amount of its installment promissory notes. In connection with the issuance and sale of said shares of common stock, Preston also proposes to increase its authorized capital stock from \$6,000,000 to \$10,000,000, so that its authorized capital stock after such increase will consist of 100,000 shares, par value \$100 per share. The common stock will be sold at par, or for an aggregate of \$4,000,000. The installment notes are to be unsecured and nonregistered and will be dated the date of their issue. The principal amounts will be due in 25 equal annual installments on January 15 of each of the years 1965 to 1989, inclusive. Interest is to be paid semi-annually on January 15 and July 15 on the unpaid principal thereof. The interest rate will be 4.4 percent per annum, such rate being approximately equal to the cost of money to Columbia with respect to its sale of debentures on November 1, 1962.

It is stated that Preston's gas development program in the Southwest has been somewhat accelerated; that the company's 1962 and 1963 construction programs are estimated to cost \$8,900,000 and \$7,000,000, respectively; and that the proceeds of \$8,450,000 are to be applied to finance, in part, these construction programs.

The joint application states that expenses to be incurred in connection with the above transactions are estimated at \$150 for Columbia and \$590 for Preston and that no State or Federal commission, other than this Commission, has jurisdiction over the transactions proposed.

Notice is further given that any interested person may, not later than January

7, 1963, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said joint application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicants at the above-stated address, and proof of service (by affidavit or, in case of an attorney-at-law) by certificate) should be filed contemporaneously with the request. At any time after said date, the joint application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

By the Commission.

[SEAL] ORVAL L. DuBOIS,  
Secretary.

[F.R. Doc. 62-12458; Filed, Dec. 17, 1962; 8:46 a.m.]

## HOUSING AND HOME FINANCE AGENCY

Office of the Administrator

### ACTING ASSISTANT ADMINISTRATOR (TRANSPORTATION)

#### Designation

The officer appointed to the position of Deputy Assistant Administrator (Transportation) is hereby designated to serve as Acting Assistant Administrator (Transportation), during the absence of the Assistant Administrator (Transportation), with all the powers, functions, and duties delegated or assigned to the Assistant Administrator (Transportation).

(62 Stat. 1283 (1948), as amended by 64 Stat. 80 (1950), 12 U.S.C. 1701c)

Effective as of the 13th day of December 1962.

[SEAL] ROBERT C. WEAVER,  
Housing and Home  
Finance Administrator.

[F.R. Doc. 62-12475; Filed, Dec. 17, 1962; 8:48 a.m.]

### ACTING REGIONAL DIRECTOR OF ADMINISTRATION, REGION III (ATLANTA)

#### Designation

The officers appointed to the following listed positions in Region III (Atlanta) are hereby designated to serve as Acting Regional Director of Administration, Region III, during the absence of the

Regional Director of Administration, with all the powers, functions, and duties delegated or assigned to the Regional Director of Administration, provided that no officer is authorized to serve as Acting Regional Director of Administration, unless all other officers whose titles precede his in this designation are unable to serve by reason of absence:

1. Assistant Regional Director of Administration.
2. Head, Budget and Management Section.
3. Head, Accounting Section.

(Housing and Home Finance Administrator's delegation effective May 4, 1962 (27 F.R. 4319, May 4, 1962))

Effective as of the 18th day of December 1962.

[SEAL] McCLELLAN RATCHFORD,  
Regional Administrator,  
Region III.

[F.R. Doc. 62-12462; Filed, Dec. 17, 1962; 8:47 a.m.]

## SMALL BUSINESS ADMINISTRATION

[Delegation of Authority 30-VIII-12 (Rev. 2), Amdt. 3]

### BRANCH MANAGER, FARGO, NORTH DAKOTA

#### Delegation Relating to Financial Assistance, Procurement and Technical Assistance, Investment Program, and Administration

Delegation of Authority No. 30-VIII-12 (Revision 2), as amended (25 F.R. 6908, 25 F.R. 10301, and 27 F.R. 69), is hereby amended by:

1. Adding the following new paragraph I.A.10:

10. To disburse approved loans.

2. Deleting Section II in its entirety and substituting the following in lieu thereof:

II. The specific authorities delegated in subsections I.A. 1 through 9, I.B., I.C., and I.F. may not be redelegated.

Effective date: September 28, 1962.

HARRY A. SIEBEN,  
Regional Director,  
Minneapolis Regional Office.

[F.R. Doc. 62-12459; Filed, Dec. 17, 1962; 8:47 a.m.]

[Delegation of Authority 30-VIII-15, Amdt. 2]

### BRANCH MANAGER, SIOUX FALLS, SOUTH DAKOTA

#### Delegation Relating to Financial Assistance, Procurement and Technical Assistance, Investment Program, and Administration

Delegation of Authority No. 30-VIII-15, as amended (25 F.R. 10302 and 27 F.R. 69), is hereby amended by:



I. Adding subsections I.A. 9, 10, 11, and 12 as follows:

9. To approve direct loans in an amount not exceeding \$20,000.

10. To approve participation loans in an amount not exceeding \$100,000.

11. To approve and decline disaster loans.

12. To decline direct and participation business loans.

II. Deleting Section II in its entirety and substituting the following in lieu thereof:

II. The specific authorities delegated in subsections I.A. 1 through 7, 9 through 12; I.B.; I.C.; and I.F. may not be re-delegated.

Effective date: March 1, 1962.

HARRY A. SIEBEN,  
Regional Director,  
Minneapolis Regional Office.

[F.R. Doc. 62-12460; Filed, Dec. 17, 1962;  
8:47 a.m.]

[Delegation of Authority 30-VIII-23]

# BRANCH COUNSEL, FARGO, NORTH DAKOTA

## Delegation Relating to Legal Functions

I. Pursuant to the authority delegated to the Branch Manager by Delegation of Authority No. 30-VIII-12 (Revision 2), as amended (25 F.R. 6908, and 10301, and 27 F.R. 69, and Amendment 3, dated September 28, 1962), there is hereby redelegated to the Branch Counsel, Fargo, North Dakota Branch Office, the authority:

A. *Financial assistance.* To disburse approved loans.

II. The authority delegated herein may not be redelegated.

III. The authority delegated herein may be exercised by any SBA employee designated as Acting Branch Counsel.

Effective date: October 15, 1962.

PAUL W. OLANDER,  
Branch Manager, Fargo Branch  
Office, Minneapolis Regional  
Office.

[F.R. Doc. 62-12461; Filed, Dec. 17, 1962;  
8:47 a.m.]

# DEPARTMENT OF LABOR

## Wage and Hour Division

### CERTIFICATES AUTHORIZING EM- PLOYMENT OF LEARNERS AT SPE- CIAL MINIMUM RATES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), and Administrative Order No. 561 (27 F.R. 4001) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. The effective and expira-

tion dates, occupations, wage rates, number or proportion of learners, learning periods, and the principal product manufactured by the employer for certificates issued under general learner regulations (29 CFR 522.1 to 522.9) are as indicated below. Conditions provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following learner certificates were issued authorizing the employment of 10 percent of the total number of factory production workers for normal labor turnover purposes. The effective and expiration dates are indicated.

Bayly Manufacturing Co., 1121 Annadale Street, Sanger, Calif.; effective 11-28-62 to 11-27-63 (men's and boys' denim jeans and men's denim overalls).

Bayly Manufacturing Co., 1120 North Santa Fe Avenue, Visalia, Calif.; effective 11-28-62 to 11-27-63 (men's twill work pants).

Bayly Manufacturing Co., 2000 Arapahoe, Denver, Colo.; effective 11-30-62 to 11-29-63 (men's denim, drill, and duck overalls).

Blue Bell, Inc., 450 East Barnes Street, Bushnell, Ill.; effective 12-9-62 to 12-8-63 (men's cotton khaki trousers).

Carolina Blouse Co., Allen Street, Woodruff, S.C.; effective 11-28-62 to 11-27-63 (women's and children's blouses).

Cluett, Peabody & Co., Inc., 1221 West Third Street, Williamsport, Pa.; effective 12-8-62 to 12-7-63 (men's sport shirts).

M. Fine and Sons Manufacturing Co., Inc., 15th and Main Streets, New Albany, Ind.; effective 11-28-62 to 11-27-63 (cotton and wool work shirts and work jackets).

Glen of Michigan, Division of Glen Manufacturing, Inc., 77 Hancock Street, Manistee, Mich.; effective 12-6-62 to 12-5-63. Learners may not be employed at special minimum wage rates in the production of separate skirts (misses' dresses, blouses, and skirts).

Hartsville Garment Corp., 226 Broadway, Hartsville, Tenn.; effective 11-28-62 to 11-27-63 (men's sport shirts).

Hercules Trouser Co., Hillsboro, Ohio; effective 12-1-62 to 11-30-63 (men's and boys' single pants).

Hercules Trouser Co., Manchester, Ohio; effective 12-1-62 to 11-30-63 (men's and boys' single pants).

Hickman Garment Corp., Hickman, Ky.; effective 12-2-62 to 12-1-63 (men's, boys' and ladies' outerwear jackets and raincoats).

Hollywood Vassarette, Arkadelphia, Ark.; effective 12-4-62 to 12-3-63 (brassieres).

Hollywood Vassarette, Athens, Tex.; effective 12-4-62 to 12-3-63 (brassieres).

Hollywood Vassarette, Paris, Tex.; effective 12-4-62 to 12-3-63 (brassieres).

McAdoo Manufacturing Co., Inc., South Hancock Street, McAdoo, Pa.; effective 12-6-62 to 12-5-63 (children's polo shirts).

Madill Manufacturing Co., Inc., Madill, Okla.; effective 12-5-62 to 12-4-63 (men's dress trousers).

Manchester Pants Co., Manchester, Md.; effective 12-1-62 to 11-30-63. Learners may not be employed at special minimum wage rates in the production of suit pants (men's and boys' trousers).

Manhattan Shirt Co., Tripp Street, Americus, Ga.; effective 11-27-62 to 11-26-63 (men's dress shirts).

Manhattan Shirt Co., Poplar Hill Avenue and Calvert Street, 416 East Main Street, Salisbury, Md.; effective 12-1-62 to 11-30-63 (men's and ladies' shirts).

Manhattan Shirt Co., U.S. By Pass No. 29 and No. 70, Lexington, N.C.; effective 12-1-62

to 11-30-63 (ladies' shirts and men's sport shirts).

Manhattan Shirt Co., 717 Capouse Avenue, Scranton, Pa.; effective 12-1-62 to 11-30-63 (men's sport shirts).

Manhattan Shirt Co., Leeds Avenue, Charleston Heights, S.C.; effective 12-1-62 to 11-30-63 (men's dress and sport shirts).

Myco Manufacturing Co., Inc., Montgomery, Pa.; effective 12-1-62 to 11-30-63 (ladies' housecoats, dusters, and robes).

Primo Pants Co., Versailles, Mo.; effective 12-1-62 to 11-30-63 (men's pants).

Savada Bros., Inc., 115-121 Mulberry Street, Millville, N.J.; effective 11-28-62 to 11-27-63 (boys' sport shirts).

I. Schneierson & Sons, Inc., 460 Globe Street, Fall River, Mass.; effective 12-1-62 to 11-30-63. Ten percent of the total number of factory production workers engaged in the production of women's and children's woven nightwear and underwear for normal labor turnover purposes.

The following learner certificates were issued for normal labor turnover purposes. The effective and expiration dates and the number of learners authorized are indicated.

Allee-Barry, Inc., Columbus, Kans.; effective 12-8-62 to 12-7-63; 10 learners (work pants, and boys' and youths' semidress pants).

Armored Garments, Inc., 223 Cabin Road, Spruce Pine, N.C.; effective 12-1-62 to 11-30-63; 10 learners (boys' dungarees).

LGAM Co., Woodsfield, Ohio; effective 12-4-62 to 12-3-63; 10 learners (ladies' blouses).

Quentin Garment Co., Inc., King and Church Streets, Annville, Pa.; effective 11-30-62 to 11-29-63; 10 learners (boys' pajamas).

Savada Bros., Inc., North East Boulevard, Landisville, N.J.; effective 11-28-62 to 11-27-63; 10 learners (boys' sport shirts).

Savada Bros., Inc., Wheat Road, Vineland, N.J.; effective 11-28-62 to 11-27-63; 10 learners (boys' sport shirts).

The following learner certificates were issued for plant expansion purposes. The effective and expiration dates and the number of learners authorized are indicated.

Carolina Sleepwear Corp., Weldon, N.C.; effective 12-1-62 to 5-31-63; 30 learners (ladies' sleepwear—pajamas and gowns).

LGAM Co., Woodsfield, Ohio; effective 12-4-62 to 6-3-63; 40 learners (ladies' blouses).

Spring City Manufacturing Co., Spring City, Tenn.; effective 11-30-62 to 5-29-63; 150 learners (men's and boys' pajamas).

Summerton Uniform Corp., Summerton, S.C.; effective 11-29-62 to 3-19-63; 25 learners (nurses' and maids' uniforms) (supplemental certificate).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.40 to 522.43, as amended).

Lynne Hosiery Mills, Inc., 851 North South Street, Mount Airy, N.C.; effective 11-28-62 to 11-27-63; 5 percent of the total number of factory production workers for normal labor turnover purposes (seamless).

Spruce Pine Hosiery Mill, Inc., Spruce Pine, N.C.; effective 11-30-62 to 11-29-63; five learners for normal labor turnover purposes (seamless).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.30 to 522.35, as amended).

I. Schneierson & Sons, Inc., 460 Globe Street, Fall River, Mass.; effective 12-1-62 to 11-30-63; 5 percent of the total number of factory production workers engaged in



the production of women's and children's knitted underwear and sleepwear for normal labor turnover purposes (women's and children's knitted underwear).

Each learner certificate has been issued upon the representations of the employers which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within fifteen days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR, Part 528.

Signed at Washington, D.C., this 7th day of December 1962.

ROBERT G. GRONEWALD,  
Authorized Representative  
of the Administrator.

[F.R. Doc. 62-12457; Filed, Dec. 17, 1962;  
8:46 a.m.]

## INTERSTATE COMMERCE COMMISSION

### FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 13, 1962.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

#### LONG-AND-SHORT HAUL

FSA No. 38075: *Kyanite from Clover, S.C., to Waynesburg, Ohio.* Filed by O. W. South, Jr., Agent (No. A4265), for interested rail carriers. Rates on kyanite, crude ground, not pulverized, in carloads, from Clover, S.C., to Waynesburg, Ohio.

Grounds for relief: Market competition.

Tariff: Supplement 62 to Southern Freight Association tariff I.C.C. S-126.

FSA No. 38076: *Starch or dextrine to Catawba, S.C.* Filed by O. W. South, Jr., Agent (No. A4264), for interested

rail carriers. Rates on starch or dextrine, and related articles, in carloads, from specified points in Illinois, Iowa and Missouri to Catawba, S.C.

Grounds for relief: Market competition.

Tariffs: Supplement 42 to Illinois Freight Association tariff I.C.C. 979 and supplement 108 to Southern Freight Association tariff I.C.C. S-116.

FSA No. 38077: *Phosphate rock to points in western trunk line territory.* Filed by O. W. South, Jr., Agent (No. A4266), for interested rail carriers. Rates on phosphate rock, crude lump, or phosphate rock, crude ground, or limestone, phosphatic, in carloads, from Aetna, Centerville, Deans, Godwin, Mt. Pleasant, Siglo, South Columbia, Twomey and Wales, Tenn., on the L&N RR, to points in western trunk line territory.

Grounds for relief: Market competition.

Tariff: Supplement 8 to Southern Freight Association tariff I.C.C. S-171.

By the Commission.

[SEAL] HAROLD D. MCCOY,  
Secretary.

[F.R. Doc. 62-12466; Filed, Dec. 17, 1962;  
8:48 a.m.]

## CUMULATIVE CODIFICATION GUIDE—DECEMBER

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published to date during December.

| 3 CFR                                                                         | Page                       |
|-------------------------------------------------------------------------------|----------------------------|
| PROCLAMATIONS:                                                                |                            |
| 3279                                                                          | 11985                      |
| 3290                                                                          | 11985                      |
| 3328                                                                          | 11985                      |
| 3386                                                                          | 11985                      |
| 3389                                                                          | 11985                      |
| 3508                                                                          | 11913                      |
| 3509                                                                          | 11985                      |
| 3510                                                                          | 12115                      |
| EXECUTIVE ORDERS:                                                             |                            |
| Mar. 4, 1891                                                                  | 12370                      |
| July 2, 1910                                                                  | 12220, 12371               |
| July 21, 1915                                                                 | 12059                      |
| Aug. 27, 1915                                                                 | 12059                      |
| Oct. 30, 1916                                                                 | 12220                      |
| Nov. 22, 1924                                                                 | 12277                      |
| 6616                                                                          | 12058                      |
| 7211                                                                          | 12219                      |
| 9708                                                                          | 12393                      |
| 10532                                                                         | 12393                      |
| 11017                                                                         | 11847                      |
| 11069                                                                         | 11847                      |
| 11070                                                                         | 12393                      |
| PRESIDENTIAL DOCUMENTS OTHER<br>THAN PROCLAMATIONS AND EXECU-<br>TIVE ORDERS: |                            |
| Memorandum, Nov. 2, 1962                                                      | 12277                      |
| 4 CFR                                                                         |                            |
| 30                                                                            | 12044                      |
| 51                                                                            | 12044, 12395               |
| 52                                                                            | 12395                      |
| 5 CFR                                                                         |                            |
| 6                                                                             | 11989, 12313, 12395, 12427 |
| 204                                                                           | 12395                      |
| 6 CFR                                                                         |                            |
| 373                                                                           | 12396                      |
| 375                                                                           | 12396                      |
| 464                                                                           | 11918                      |

| 7 CFR           | Page                       |
|-----------------|----------------------------|
| 47              | 12398                      |
| 354             | 12044                      |
| 401             | 12044, 12117, 12252, 12253 |
| 404             | 12253                      |
| 601             | 12209                      |
| 719             | 11919                      |
| 722             | 12045, 12054, 12427, 12428 |
| 724             | 11919                      |
| 728             | 12332                      |
| 729             | 11920                      |
| 776             | 12430                      |
| 811             | 12340, 12473               |
| 905             | 11870, 11871               |
| 907             | 11872, 12182, 12437        |
| 909             | 12437                      |
| 912             | 12117                      |
| 947             | 12183                      |
| 949             | 11872                      |
| 970             | 12183                      |
| 971             | 11934                      |
| 982             | 12344                      |
| 990             | 12344                      |
| 1040            | 12255                      |
| 1042            | 12256                      |
| 1125            | 11873                      |
| 1133            | 11874                      |
| 1136            | 11874                      |
| 1138            | 12346                      |
| PROPOSED RULES: |                            |
| 52              | 11954, 12190, 12222        |
| 728             | 11955                      |
| 730             | 12270                      |
| 811             | 11895                      |
| 812             | 12375                      |
| 910             | 12449                      |
| 959             | 11998, 12190               |
| 982             | 12191, 12375               |
| 1001            | 12449                      |
| 1004            | 11999                      |

| 7 CFR—Continued          | Page         |
|--------------------------|--------------|
| PROPOSED RULES—Continued |              |
| 1006                     | 12449        |
| 1007                     | 12449        |
| 1010                     | 11999        |
| 1014                     | 12449        |
| 1015                     | 12449        |
| 1032                     | 12222        |
| 1048                     | 11955        |
| 1050                     | 12222        |
| 1063                     | 12222        |
| 1108                     | 12271        |
| 1130                     | 11955, 12376 |
| 8 CFR                    |              |
| 252                      | 11875        |
| 9 CFR                    |              |
| 76                       | 11935        |
| 80                       | 12183        |
| 101                      | 11935        |
| 112                      | 11935        |
| 117                      | 11936        |
| 118                      | 11936        |
| 119                      | 11937        |
| 120                      | 11937        |
| PROPOSED RULES:          |              |
| 74                       | 12062        |
| 10 CFR                   |              |
| 2                        | 12184        |
| 30                       | 12257        |
| 50                       | 12184        |
| 115                      | 12184        |
| 12 CFR                   |              |
| 1                        | 12399        |
| 220                      | 12346        |
| PROPOSED RULES:          |              |
| 209                      | 12271        |
| 219                      | 12001        |
| 334                      | 12000        |



| 13 CFR                                   |       | Page                                                   | 17 CFR—Continued |       | Page                                                                 | 32A CFR             |       | Page                       |
|------------------------------------------|-------|--------------------------------------------------------|------------------|-------|----------------------------------------------------------------------|---------------------|-------|----------------------------|
| 121                                      | ----- | 12438                                                  | 270              | ----- | 11993                                                                | OIA (Ch. X):        | ----- | -----                      |
| PROPOSED RULES:                          |       | -----                                                  | 18 CFR           |       | -----                                                                | OI Reg. 1           | ----- | 12442                      |
| 121                                      | ----- | 11973                                                  | 1                | ----- | 12212                                                                | 33 CFR              |       |                            |
| 14 CFR                                   |       | -----                                                  | 3                | ----- | 12212                                                                | 203                 | ----- | 11995, 12184, 12482        |
| 4b                                       | ----- | 12399                                                  | 125              | ----- | 12241                                                                | 207                 | ----- | 12368                      |
| 6                                        | ----- | 12400                                                  | 225              | ----- | 12241                                                                | 36 CFR              |       |                            |
| 10                                       | ----- | 12399                                                  | PROPOSED RULES:  |       | -----                                                                | 213                 | ----- | 12217                      |
| 40                                       | ----- | 12258, 12399                                           | 4                | ----- | 12378                                                                | PROPOSED RULES:     |       | -----                      |
| 41                                       | ----- | 12258, 12399                                           | 19 CFR           |       | -----                                                                | 1                   | ----- | 12190                      |
| 42                                       | ----- | 12258, 12399                                           | 1                | ----- | 12258                                                                | 38 CFR              |       |                            |
| 43                                       | ----- | 12399                                                  | 3                | ----- | 12475                                                                | 3                   | ----- | 11886, 11995, 12044, 12131 |
| 46                                       | ----- | 12258                                                  | 10               | ----- | 12409                                                                | 6                   | ----- | 11893                      |
| 71 [New]                                 | ----- | 11938                                                  | 24               | ----- | 11943                                                                | 8                   | ----- | 11893                      |
| 11939, 11989, 12165, 12166, 12209,       | ----- | -----                                                  | 201-208          | ----- | 12117                                                                | 17                  | ----- | 12218                      |
| 12211, 12258, 12347, 12348, 12438        | ----- | -----                                                  | 20 CFR           |       | -----                                                                | 21                  | ----- | 12482                      |
| 73 [New]                                 | ----- | 11941, 12438                                           | 404              | ----- | 12260                                                                | 39 CFR              |       |                            |
| 75 [New]                                 | ----- | 11939, 11989, 12438                                    | 501              | ----- | 12186                                                                | Chapter I           | ----- | 12483, 12484               |
| 151 [New]                                | ----- | 12349                                                  | 502              | ----- | 12186                                                                | 4                   | ----- | 12448                      |
| 153 [New]                                | ----- | 12360                                                  | 21 CFR           |       | -----                                                                | 12                  | ----- | 12448                      |
| 155 [New]                                | ----- | 12361                                                  | 3                | ----- | 11943, 12092                                                         | 168                 | ----- | 12410                      |
| 157 [New]                                | ----- | 12363                                                  | 120              | ----- | 12092, 12212                                                         | 41 CFR              |       |                            |
| 161 [New]                                | ----- | 12363                                                  | 121              | ----- | 11876, 11877, 11944, 11995, 12060, 12061, 12213, 12409, 12410, 12475 | 9-7                 | ----- | 11946                      |
| 163 [New]                                | ----- | 12364                                                  | 141c             | ----- | 11944                                                                | 9-9                 | ----- | 12037                      |
| 208                                      | ----- | 12259                                                  | 146c             | ----- | 11944, 12126, 12480                                                  | 18-7                | ----- | 12499                      |
| 507                                      | ----- | 11990                                                  | PROPOSED RULES:  |       | -----                                                                | 18-9                | ----- | 12499                      |
| 11991, 12056, 12117, 12167, 12405, 12473 | ----- | -----                                                  | 3                | ----- | 12412                                                                | PROPOSED RULES:     |       | -----                      |
| 514                                      | ----- | 12405                                                  | 120              | ----- | 12222                                                                | 50-202              | ----- | 12450                      |
| 550                                      | ----- | 12366                                                  | 121              | ----- | 11902, 11999, 12139, 12222, 12223, 12486                             | 43 CFR              |       |                            |
| 555                                      | ----- | 12366                                                  | 24 CFR           |       | -----                                                                | 260                 | ----- | 12368                      |
| 565                                      | ----- | 12366                                                  | 200              | ----- | 12126                                                                | PUBLIC LAND ORDERS: |       | -----                      |
| 574                                      | ----- | 12366                                                  | 25 CFR           |       | -----                                                                | 576                 | ----- | 12219                      |
| 575                                      | ----- | 12366                                                  | 254              | ----- | 12399                                                                | 669                 | ----- | 12059                      |
| 576                                      | ----- | 12366                                                  | 26 CFR           |       | -----                                                                | 712                 | ----- | 11974                      |
| 577                                      | ----- | 12366                                                  | 1                | ----- | 11877, 11881, 11915                                                  | 786                 | ----- | 12059                      |
| 601                                      | ----- | 12057, 12212                                           | 301              | ----- | 11881                                                                | 861                 | ----- | 11894                      |
| 608                                      | ----- | 12057, 12212                                           | PROPOSED RULES:  |       | -----                                                                | 1489                | ----- | 12131                      |
| 609                                      | ----- | 12168, 12174, 12181                                    | 1                | ----- | 12137                                                                | 1960                | ----- | 12219                      |
| 610                                      | ----- | 12406                                                  | 48               | ----- | 12267                                                                | 2340                | ----- | 11894                      |
| 625                                      | ----- | 12366                                                  | 29 CFR           |       | -----                                                                | 2390                | ----- | 12219                      |
| PROPOSED RULES:                          |       | -----                                                  | 614              | ----- | 12367                                                                | 2497                | ----- | 12370                      |
| 1                                        | ----- | 12412                                                  | 615              | ----- | 12480                                                                | 2771                | ----- | 12219                      |
| 3                                        | ----- | 11999, 12412                                           | PROPOSED RULES:  |       | -----                                                                | 2786                | ----- | 12219                      |
| 4b                                       | ----- | 11999, 12412                                           | 522              | ----- | 11968                                                                | 2787                | ----- | 12219                      |
| 5                                        | ----- | 12412                                                  | 601              | ----- | 12062                                                                | 2820                | ----- | 11894                      |
| 6                                        | ----- | 12224, 12412                                           | 670              | ----- | 12062                                                                | 2821                | ----- | 12058                      |
| 7                                        | ----- | 12412                                                  | 673              | ----- | 12449                                                                | 2822                | ----- | 12058                      |
| 10                                       | ----- | 12412                                                  | 675              | ----- | 12449                                                                | 2823                | ----- | 12058                      |
| 13-14                                    | ----- | 12412                                                  | 31 CFR           |       | -----                                                                | 2824                | ----- | 12059                      |
| 18                                       | ----- | 12412                                                  | 340              | ----- | 12481                                                                | 2825                | ----- | 12059                      |
| 20-21                                    | ----- | 12412                                                  | 32 CFR           |       | -----                                                                | 2826                | ----- | 12059                      |
| 24                                       | ----- | 12412                                                  | 231              | ----- | 11893                                                                | 2827                | ----- | 12131                      |
| 40                                       | ----- | 12191, 12412                                           | 564              | ----- | 12165                                                                | 2828                | ----- | 12131                      |
| 41                                       | ----- | 12191, 12412                                           | 751              | ----- | 11946                                                                | 2829                | ----- | 12132                      |
| 42                                       | ----- | 12191, 12412                                           | 805              | ----- | 12260                                                                | 2830                | ----- | 12132                      |
| 43                                       | ----- | 12412                                                  | 1001             | ----- | 12213                                                                | 2831                | ----- | 12218                      |
| 45                                       | ----- | 12376                                                  | 1007             | ----- | 12213                                                                | 2832                | ----- | 12218                      |
| 46                                       | ----- | 12191, 12412                                           | 1008             | ----- | 11946                                                                | 2833                | ----- | 12219                      |
| 49                                       | ----- | 12412                                                  | 1010             | ----- | 12213                                                                | 2834                | ----- | 12219                      |
| 52                                       | ----- | 12412                                                  | 1012             | ----- | 12213                                                                | 2835                | ----- | 12219                      |
| 221                                      | ----- | 11898                                                  | 1013             | ----- | 12213                                                                | 2836                | ----- | 12219                      |
| 294                                      | ----- | 12223                                                  | 1014             | ----- | 12127                                                                | 2837                | ----- | 12220                      |
| 514                                      | ----- | 12141                                                  | 1016             | ----- | 12127                                                                | 2838                | ----- | 12220                      |
| 515                                      | ----- | 12412                                                  | 1017             | ----- | 12128                                                                | 2839                | ----- | 12220                      |
| 600                                      | ----- | 11898, 11970                                           | 1030             | ----- | 12128                                                                | 2840                | ----- | 12261                      |
| 601                                      | ----- | 11898, 11900, 11970                                    | 1053             | ----- | 12214                                                                | 2841                | ----- | 12370                      |
| 602                                      | ----- | 11898, 11900, 11901, 12450                             | 1054             | ----- | 12214                                                                | 2842                | ----- | 12370                      |
| 1245                                     | ----- | 12486                                                  | 1055             | ----- | 12216                                                                | 2843                | ----- | 12370                      |
| 15 CFR                                   |       | -----                                                  | 1057             | ----- | 12216                                                                | 2844                | ----- | 12370                      |
| 6                                        | ----- | 11941                                                  | 1059             | ----- | 12217                                                                | 2845                | ----- | 12371                      |
| 16 CFR                                   |       | -----                                                  | 1060             | ----- | 12217                                                                | 2846                | ----- | 12371                      |
| 13                                       | ----- | 11875, 11876, 11991, 11992, 12057, 12441, 12442, 12474 | 33 CFR           |       | -----                                                                | 2847                | ----- | 12371                      |
| 17 CFR                                   |       | -----                                                  | 1                | ----- | 12212                                                                | 2848                | ----- | 12372                      |
| 150                                      | ----- | 12366                                                  | 3                | ----- | 12212                                                                | 2849                | ----- | 12447                      |



## FEDERAL REGISTER

|                 |                     |
|-----------------|---------------------|
| <b>45 CFR</b>   | Page                |
| 13-----         | 12261               |
| <b>46 CFR</b>   |                     |
| 146-----        | 12133               |
| 206-----        | 12189               |
| 402-----        | 11947               |
| PROPOSED RULES: |                     |
| 510-----        | 12412               |
| <b>47 CFR</b>   |                     |
| 0-----          | 11948, 11996, 12221 |
| 1-----          | 11948               |
| 2-----          | 12372               |
| 3-----          | 11996, 12221        |
| 18-----         | 11950               |
| PROPOSED RULES: |                     |
| 1-----          | 11971, 11999        |
| 3-----          | 12063, 12193, 12451 |
| 25-----         | 11971               |
| 31-----         | 12486               |
| 35-----         | 12486               |
| <b>49 CFR</b>   |                     |
| 1-----          | 12188               |
| 7-----          | 12189               |
| 71-78-----      | 11849               |
| PROPOSED RULES: |                     |
| 170-----        | 12001               |
| <b>50 CFR</b>   |                     |
| 32-----         | 12060               |
| 33-----         | 11952               |
| PROPOSED RULES: |                     |
| 11-----         | 12138               |



## PART II

# FEDERAL REGISTER

VOLUME 27

NUMBER 244

Washington, Tuesday, December 18, 1962

**Title 41—PUBLIC CONTRACTS****Chapter 18—National Aeronautics and Space Administration****PART 18-7—CONTRACT CLAUSES****PART 18-9—PATENTS, DATA AND COPYRIGHTS**

1. Part 18-7 is revised in its entirety, as follows:

Sec.  
18-7.000 Scope of part.

Subpart 18-7.1—Clauses for Fixed-Price Supply Contracts

18-7.100 Scope of subpart.  
18-7.101 [Reserved]  
18-7.102 Applicability.  
18-7.103 Required clauses.  
18-7.103-1 Definitions.  
18-7.103-2 Changes.  
18-7.103-3 Extras.  
18-7.103-4 Variation in quantity.  
18-7.103-5 Inspection.  
18-7.103-6 Responsibility for supplies.  
18-7.103-7 Payments.  
18-7.103-8 Assignment of claims.  
18-7.103-9 Additional bond security.  
18-7.103-10 Federal, State, and local taxes.  
18-7.103-11 Default.  
18-7.103-12 Disputes.  
18-7.103-13 Renegotiation.  
18-7.103-14 [Reserved]  
18-7.103-15 Soviet-controlled areas.  
18-7.103-16 Eight-Hour Law of 1912—overtime compensation.  
18-7.103-17 Walsh-Healey Public Contracts Act.  
18-7.103-18 Nondiscrimination in employment.  
18-7.103-18 Officials not to benefit.  
18-7.103-20 Covenant against contingent fees.  
18-7.103-21 Termination for convenience of the Government.  
18-7.103-22 Authorization and consent.  
18-7.103-23 Notice and assistance regarding patent and copyright infringement.  
18-7.103-24—18-7.103-52 [Reserved]  
18-7.103-53 Order of precedence.  
18-7.104 Clauses required to be used when applicable.  
18-7.104-1 Clauses for contracts involving construction work.  
18-7.104-2 [Reserved]  
18-7.104-3 Buy American Act.  
18-7.104-4 Notice to the Government of labor disputes.

Sec.  
18-7.104-5 Patent indemnity.  
18-7.104-6 Filing of patent applications.  
18-7.104-7 Property rights in inventions.  
18-7.104-8 [Reserved]  
18-7.104-9 Rights in data.  
18-7.104-10 [Reserved]  
18-7.104-11 [Reserved]  
18-7.104-12 Security requirements.  
18-7.104-13 [Reserved]  
18-7.104-14 Utilization of small business concerns.  
18-7.104-15 Examination of records.  
18-7.104-16 [Reserved]  
18-7.104-17 Convict labor.  
18-7.104-18 Priorities, allocations and allotments.  
18-7.104-19 [Reserved]  
18-7.104-20 Utilization of concerns in labor surplus areas.  
18-7.104-21 Limitation on withholding of payments.  
18-7.104-22 Small Business Subcontracting Program.  
18-7.104-23 Subcontracts.  
18-7.104-24 Government-furnished property.  
18-7.104-25 Special tooling.  
18-7.104-26 Changes to Make-or-Buy Program.  
18-7.104-27 Payment for overtime and shift premiums.  
18-7.104-28—18-7.104-34 [Reserved]  
18-7.104-35 Progress payments.  
18-7.104-36 Preference for United States—flag air and ocean services.  
18-7.104-37—18-7.104-39 [Reserved]  
18-7.104-40 Competition in subcontracting.  
18-7.104-41—18-7.104-49 [Reserved]  
18-7.104-50 Data requirements.  
18-7.104-51 Approval of contract.  
18-7.105 Additional clauses.  
18-7.105-1 Alterations in contract.  
18-7.105-2—18-7.105-4 [Reserved]  
18-7.105-5 Liquidated damages.  
18-7.105-6 Bill of materials.  
18-7.105-7—18-7.105-54 [Reserved]  
18-7.105-55 Warranty.  
18-7.105-56 Guaranty.  
18-7.106 Price escalation clauses (Established prices).  
18-7.106-1 Escalation clause for basic steel, aluminum, brass, bronze or copper mill products.  
18-7.106-2 Escalation clause for nonstandard steel items.  
18-7.106-3 Escalation clause for standard supplies.  
18-7.106-4 Escalation clause for semistandard supplies.  
18-7.107 Price escalation clause (Labor and material).  
18-7.108 Incentive price revision clause.  
18-7.109 Price redetermination.

**Subpart 18-7.2—Clauses for Cost-Reimbursement Type Supply Contracts**

Sec.  
18-7.200 Scope of subpart.  
18-7.201 [Reserved]  
18-7.202 Applicability.  
18-7.203 Required clauses.  
18-7.203-1 Definitions.  
18-7.203-2 Changes.  
18-7.203-3 Limitation of cost.  
18-7.203-4 Allowable cost, fixed fee and payment.  
18-7.203-5 Inspection of supplies and correction of defects.  
18-7.203-6 Assignment of claims.  
18-7.203-7 Records.  
18-7.203-8 Subcontracts.  
18-7.203-9 Utilization of small business concerns.  
18-7.203-10 Termination.  
18-7.203-11 Excusable delays.  
18-7.203-12 Disputes.  
18-7.203-13 Renegotiation.  
18-7.203-14 [Reserved]  
18-7.203-15 Convict labor.  
18-7.203-16 Eight-Hour Law of 1912—Overtime compensation.  
18-7.203-17 Walsh-Healey Public Contracts Act.  
18-7.203-18 Nondiscrimination in employment.  
18-7.203-19 Officials not to benefit.  
18-7.203-20 Covenant against contingent fees.  
18-7.203-21 Government property.  
18-7.203-22 Insurance-liability to third persons.  
18-7.203-23 Authorization and consent.  
18-7.203-24 Notice and assistance regarding patent and copyright infringement.  
18-7.203-25 Soviet-controlled areas.  
18-7.203-26 Utilization of concerns in labor surplus areas.  
18-7.203-27 Payment for overtime and shift premiums.  
18-7.203-28 Competition in subcontracting.  
18-7.203-29—18-7.203-49 [Reserved]  
18-7.203-50 Payment of royalties.  
18-7.203-51 Estimated cost and fixed fee.  
18-7.203-52 Payment of fixed fee.  
18-7.204 Clauses required to be used when applicable.  
18-7.204-1 Clauses for contracts involving construction work.  
18-7.204-2 [Reserved]  
18-7.204-3 Buy American Act.  
18-7.204-4 Notice to the Government of labor disputes.  
18-7.204-5 [Reserved]  
18-7.204-6 Filing of patent applications.  
18-7.204-7 Property rights in inventions.  
18-7.204-8 [Reserved]



## RULES AND REGULATIONS

| Sec.                                                                             |                                                                    | Sec.                                                                                         |                                                                                    | Sec.        |                                                           |
|----------------------------------------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------|-----------------------------------------------------------|
| 18-7.204-9                                                                       | Rights in data                                                     | 18-7.303                                                                                     | Clauses required to be used when applicable.                                       | 18-7.402-5  | Inspection and correction of defects.                     |
| 18-7.204-10                                                                      | [Reserved]                                                         | 18-7.303-1                                                                                   | Clauses for contracts involving construction work.                                 | 18-7.402-6  | Assignment of claims.                                     |
| 18-7.204-11                                                                      | [Reserved]                                                         | 18-7.303-2                                                                                   | Filing of patent applications.                                                     | 18-7.402-7  | Records.                                                  |
| 18-7.204-12                                                                      | Security requirements.                                             | 18-7.303-3                                                                                   | 18-7.303-5 [Reserved]                                                              | 18-7.402-8  | Subcontracts.                                             |
| 18-7.204-13                                                                      | [Reserved]                                                         | 18-7.303-6                                                                                   | Priorities, allocations, and allotments.                                           | 18.7-402-9  | Utilization of small business concerns.                   |
| 18-7.204-15                                                                      | Priorities, allocations, and allotments.                           | 18-7.303-7                                                                                   | Government-furnished property.                                                     | 18-7.402-10 | Termination.                                              |
| 18-7.204-16                                                                      | Negotiated overhead rates.                                         | 18-7.303-8                                                                                   | Soviet-controlled areas.                                                           | 18-7.402-11 | Disputes.                                                 |
| 18-7.204-17                                                                      | [Reserved]                                                         | 18-7.303-9                                                                                   | Notice to the Government of labor disputes.                                        | 18-7.402-12 | Renegotiation.                                            |
| 18-7.204-18                                                                      | Limitation on withholding of payments.                             | 18-7.303-10                                                                                  | Limitation on withholding of payments.                                             | 18-7.402-13 | Buy American Act.                                         |
| 18-7.204-19                                                                      | Small Business Subcontracting Program.                             | 18-7.303-11                                                                                  | Small business subcontracting program.                                             | 18-7.402-14 | Convict labor.                                            |
| 18-7.204-20                                                                      | Changes to Make-or-Buy Program.                                    | 18-7.303-12                                                                                  | Subcontracts.                                                                      | 18-7.402-15 | Walsh-Healey Public Contracts Act.                        |
| 18-7.204-21                                                                      | 18-7.204-25 [Reserved]                                             | 18-7.303-13                                                                                  | Changes to Make-or-Buy Program.                                                    | 18-7.402-16 | Eight-Hour Law of 1912—overtime compensation.             |
| 18-7.204-26                                                                      | Preference for United States—flag air and ocean services.          | 18-7.303-14                                                                                  | Payment for overtime and shift premiums.                                           | 18-7.402-17 | Nondiscrimination in employment.                          |
| 18-7.204-27                                                                      | [Reserved]                                                         | 18-7.303-15                                                                                  | 18-7.303-22 [Reserved]                                                             | 18-7.402-18 | Officials not to benefit.                                 |
| 18-7.204-28                                                                      | General Services Administration supply sources.                    | 18-7.303-23                                                                                  | Progress payments.                                                                 | 18-7.402-19 | Covenant against contingent fees.                         |
| 18-7.204-29                                                                      | 18-7.204-49 [Reserved]                                             | 18-7.303-24                                                                                  | 18-7.303-26 [Reserved]                                                             | 18-7.402-20 | Authorization and consent.                                |
| 18-7.204-50                                                                      | Data requirements.                                                 | 18-7.303-27                                                                                  | Competition in subcontracting.                                                     | 18-7.402-21 | Notice and assistance regarding patent infringement.      |
| 18-7.204-51                                                                      | Approval of contract.                                              | 18-7.303-28                                                                                  | 18-7.303-49 [Reserved]                                                             | 18-7.402-22 | Property rights in inventions.                            |
| 18-7.204-52                                                                      | [Reserved]                                                         | 18-7.303-50                                                                                  | Data requirements.                                                                 | 18-7.402-23 | Rights in data.                                           |
| 18-7.204-53                                                                      | Limitation of Government's obligation.                             | 18-7.303-51                                                                                  | Approval of contract.                                                              | 18-7.402-24 | Security requirements.                                    |
| 18-7.204-54                                                                      | [Reserved]                                                         | 18-7.303-52                                                                                  | Preference for United States—flag air and ocean services.                          | 18-7.402-25 | Government property.                                      |
| 18-7.204-55                                                                      | NASA PERT System.                                                  | 18-7.303-53                                                                                  | [Reserved]                                                                         | 18-7.402-26 | Insurance-liability to third persons.                     |
| 18-7.204-56                                                                      | NASA financial management reporting.                               | 18-7.303-54                                                                                  | Materials reports.                                                                 | 18-7.402-27 | Utilization of concerns in labor surplus areas.           |
| 18-7.205                                                                         | Additional clauses.                                                | 18-7.303-55                                                                                  | NASA PERT System.                                                                  | 18-7.402-28 | Payment for overtime and shift premiums.                  |
| 18-7.205-1                                                                       | Alterations in contract.                                           | 18-7.303-56                                                                                  | NASA financial management reports.                                                 | 18-7.402-29 | Competition in subcontracting.                            |
| 18-7.205-2                                                                       | [Reserved]                                                         | 18-7.304                                                                                     | Additional clauses.                                                                | 18-7.402-30 | 18-7.402-49 [Reserved]                                    |
| 18-7.205-3                                                                       | [Reserved]                                                         | 18-7.304-1                                                                                   | Changes.                                                                           | 18-7.402-50 | Payment of royalties.                                     |
| 18-7.205-4                                                                       | Bill of materials.                                                 | 18-7.304-2                                                                                   | Alterations in contract.                                                           | 18-7.402-51 | Estimated cost and fixed fee.                             |
| 18-7.205-5                                                                       | Federal, State, and local taxes.                                   | 18-7.304-3                                                                                   | [Reserved]                                                                         | 18-7.402-52 | Payment of fixed fee.                                     |
| 18-7.205-6                                                                       | 18-7.205-49 [Reserved]                                             | 18-7.304-4                                                                                   | Bill of materials.                                                                 | 18-7.402-53 | [Reserved]                                                |
| 18-7.205-50                                                                      | Notice of delay.                                                   | 18-7.304-5                                                                                   | 18-7.304-49 [Reserved]                                                             | 18-7.402-54 | Reports of work.                                          |
| 18-7.205-51                                                                      | Program progress reports.                                          | 18-7.304-50                                                                                  | Notice of delay.                                                                   | 18-7.403    | Clauses required to be used when applicable.              |
| 18-7.205-52                                                                      | Date of incurrence of costs.                                       | 18-7.304-51                                                                                  | Program progress reports.                                                          | 18-7.403-1  | Clauses for contracts involving construction work.        |
| 18-7.205-53                                                                      | Contractor's independent research program.                         | 18-7.304-52                                                                                  | 18-7.304-58 [Reserved]                                                             | 18-7.403-2  | Filing of patent applications.                            |
| 18-7.205-54                                                                      | Reports of work.                                                   | 18-7.304-59                                                                                  | Price escalation.                                                                  | 18-7.403-3  | [Reserved]                                                |
| <b>Subpart 18-7.3—Clauses for Fixed-Price Research and Development Contracts</b> |                                                                    | 18-7.304-60                                                                                  | Incentive price revision.                                                          | 18-7.403-4  | [Reserved]                                                |
| 18-7.300                                                                         | Scope of subpart.                                                  | 18-7.304-61                                                                                  | Special tooling.                                                                   | 18-7.403-5  | Excusable delays.                                         |
| 18-7.301                                                                         | Applicability.                                                     | 18-7.305                                                                                     | 18-7.349 [Reserved]                                                                | 18-7.403-6  | [Reserved]                                                |
| 18-7.302                                                                         | Required clauses.                                                  | 18-7.350                                                                                     | Short form clauses for fixed-price research contracts with nonprofit institutions. | 18-7.403-7  | Priorities, allocations, and allotments.                  |
| 18-7.302-1                                                                       | Definitions.                                                       | 18-7.350-1                                                                                   | Definitions.                                                                       | 18-7.403-8  | Soviet-controlled areas.                                  |
| 18-7.302-2                                                                       | Payments.                                                          | 18-7.350-2                                                                                   | Payment.                                                                           | 18-7.403-9  | Negotiated overhead rates.                                |
| 18-7.302-3                                                                       | Standards of work.                                                 | 18-7.350-3                                                                                   | Technical reports and data.                                                        | 18-7.403-10 | Notice to the Government of labor disputes.               |
| 18-7.302-4                                                                       | Inspection.                                                        | 18-7.350-4                                                                                   | Government-furnished property.                                                     | 18-7.403-11 | [Reserved]                                                |
| 18-7.302-5                                                                       | Assignment of claims.                                              | 18-7.350-5                                                                                   | Release of information.                                                            | 18-7.403-12 | Limitation on withholding of payments.                    |
| 18-7.302-6                                                                       | Examination of records.                                            | 18-7.350-6                                                                                   | Security.                                                                          | 18-7.403-13 | Small business subcontracting program.                    |
| 18-7.302-7                                                                       | Federal, State, and local taxes.                                   | 18-7.350-7                                                                                   | Property rights in inventions.                                                     | 18-7.403-14 | Changes to Make-or-Buy Program.                           |
| 18-7.302-8                                                                       | Utilization of small business concerns.                            | 18-7.350-8                                                                                   | Disputes.                                                                          | 18-7.403-15 | 18-7.403-22 [Reserved]                                    |
| 18-7.302-9                                                                       | Default.                                                           | 18-7.350-9                                                                                   | Termination at the option of the Government.                                       | 18-7.403-23 | General Services Administration supply sources.           |
| 18-7.302-10                                                                      | Termination for the convenience of the Government.                 | 18-7.350-10                                                                                  | Authorization and consent.                                                         | 18-7.403-24 | 18-7.403-49 [Reserved]                                    |
| 18-7.302-11                                                                      | Disputes.                                                          | 18-7.350-11                                                                                  | Notice and assistance regarding patent and copyright infringement.                 | 18-7.403-50 | Data requirements.                                        |
| 18-7.302-12                                                                      | Renegotiation.                                                     | 18-7.350-12                                                                                  | Buy American Act.                                                                  | 18-7.403-51 | Approval of contract.                                     |
| 18-7.302-13                                                                      | Buy American Act.                                                  | 18-7.350-13                                                                                  | Examination of records.                                                            | 18-7.403-52 | Preference for United States—flag air and ocean services. |
| 18-7.302-14                                                                      | Convict labor.                                                     | 18-7.350-14                                                                                  | Nondiscrimination in employment.                                                   | 18-7.403-53 | Limitation of Government's obligation.                    |
| 18-7.302-15                                                                      | Walsh-Healey Public Contracts Act.                                 | 18-7.350-15                                                                                  | Covenant against contingent fees.                                                  | 18-7.403-54 | Materials reports.                                        |
| 18-7.302-16                                                                      | Eight-Hour Law of 1912—overtime compensation.                      | 18-7.350-16                                                                                  | Officials not to benefit.                                                          | 18-7.403-55 | NASA PERT System.                                         |
| 18-7.302-17                                                                      | Nondiscrimination in employment.                                   | 18-7.350-17                                                                                  | Convict labor.                                                                     | 18-7.403-56 | Financial management reports.                             |
| 18-7.302-18                                                                      | Officials not to benefit.                                          | 18-7.350-18                                                                                  | Additional clauses.                                                                | 18-7.404    | Additional clauses.                                       |
| 18-7.302-19                                                                      | Covenant against contingent fees.                                  | <b>Subpart 18-7.4—Clauses for Cost-Reimbursement Type Research and Development Contracts</b> |                                                                                    | 18-7.404-1  | Changes.                                                  |
| 18-7.302-20                                                                      | [Reserved]                                                         | 18-7.400                                                                                     | Scope of subpart.                                                                  | 18-7.404-2  | Alterations in contract.                                  |
| 18-7.302-21                                                                      | Authorization and consent.                                         | 18-7.401                                                                                     | Applicability.                                                                     | 18-7.404-3  | [Reserved]                                                |
| 18-7.302-22                                                                      | Notice and assistance regarding patent and copyright infringement. | 18-7.402                                                                                     | Required clauses for contracts with fee.                                           | 18-7.404-4  | Bill of materials.                                        |
| 18-7.302-23                                                                      | Property rights in inventions.                                     | 18-7.402-1                                                                                   | Definitions.                                                                       | 18-7.404-5  | 18-7.404-49 [Reserved]                                    |
| 18-7.302-24                                                                      | Rights in data.                                                    | 18-7.402-2                                                                                   | Limitation of cost.                                                                | 18-7.404-50 | Notice of delay.                                          |
| 18-7.302-25                                                                      | Security requirements.                                             | 18-7.402-3                                                                                   | Allowable cost, fixed fee and payment.                                             | 18-7.404-51 | Program progress reports.                                 |
| 18-7.302-26                                                                      | Utilization of concerns in labor surplus areas.                    | 18-7.402-4                                                                                   | Standards of work.                                                                 | 18-7.404-52 | Date of incurrence of costs.                              |
| 18-7.302-27                                                                      | 18-7.302-53 [Reserved]                                             |                                                                                              |                                                                                    | 18-7.404-53 | Contractor's independent research program.                |
| 18-7.302-54                                                                      | Reports of work.                                                   |                                                                                              |                                                                                    |             |                                                           |



Sec.  
 18-7.404-54—18-7.404-56 [Reserved]  
 18-7.404-57 Federal, State, and local taxes.  
 18-7.405-18-7.449 [Reserved]  
 18-7.450 Clauses for cost-reimbursement research and development contracts with nonprofit institutions (including educational institutions).  
 18-7.450-1 Applicability.  
 18-7.451 Required clauses.  
 18-7.451-1 Definitions.  
 18-7.451-2 Limitation of cost.  
 18-7.451-3 Allowable cost and payment.  
 18-7.451-4 Standards of work.  
 18-7.451-5 Inspection.  
 18-7.451-6 Assignment of claims.  
 18-7.451-7 Records.  
 18-7.451-8 Subcontracts.  
 18-7.451-9 Utilization of small business concerns.  
 18-7.451-10 Termination for the convenience of the Government.  
 18-7.451-11 Disputes.  
 18-7.451-12 Renegotiation.  
 18-7.451-13 Buy American Act.  
 18-7.451-14 Convict labor.  
 18-7.451-15 Walsh-Healey Public Contracts Act.  
 18-7.451-16 Eight-Hour Law of 1912—Over-time compensation.  
 18-7.451-17 Nondiscrimination in employment.  
 18-7.451-18 Officials not to benefit.  
 18-7.451-19 Covenant against contingent fees.  
 18-7.451-20 Authorization and consent.  
 18-7.451-21 Notice and assistance regarding patent and copyright infringement.  
 18-7.451-22 Property rights in inventions.  
 18-7.451-23 Rights in data.  
 18-7.451-24 Security requirements.  
 18-7.451-25 Government property.  
 18-7.451-26 Insurance-liability to third persons.  
 18-7.451-27 Utilization of concerns in labor surplus areas.  
 18-7.451-28 Payment for overtime and shift premiums.  
 18-7.451-29 Competition in subcontracting.  
 18-7.451-30—18-7.451-49 [Reserved]  
 18-7.451-50 Payment of royalties.  
 18-7.451-51 Estimated cost.  
 18-7.451-52 [Reserved]  
 18-7.451-53 [Reserved]  
 18-7.451-54 Reports of work.  
 18-7.452 Clauses required to be used when applicable.  
 18-7.452-1 Clauses for contracts involving construction work.  
 18-7.452-2 Filing of patent applications.  
 18-7.452-3—18-7.452-6 [Reserved]  
 18-7.452-7 Priorities, allocations and allotments.  
 18-7.452-8 Soviet-controlled areas.  
 18-7.452-9 Negotiated overhead rates.  
 18-7.452-10 Notice to the Government of labor disputes.  
 18-7.452-11 [Reserved]  
 18-7.452-12 Limitation on withholding of payments.  
 18-7.452-13 Small business subcontracting program.  
 18-7.452-14 Changes to Make-or-Buy Program.  
 18-7.452-15—18-7.452-22 [Reserved]  
 18-7.452-23 General Services Administration supply sources.  
 18-7.452-24—18-7.452-49 [Reserved]  
 18-7.452-50 Data requirements.  
 18-7.452-51 Approval of contract.  
 18-7.452-52 Preference for United States—Flag air and ocean services.  
 18-7.452-53 Limitation of Government's obligation.  
 18-7.452-54 Materials reports.  
 18-7.452-55 NASA PERT System.  
 18-7.452-56 NASA financial management reporting.

Sec.  
 18-7.453 Additional clauses.  
 18-7.453-1 Changes.  
 18-7.453-2 Alterations in contract.  
 18-7.453-3 [Reserved]  
 18-7.453-4 Bill of materials.  
 18-7.453-5—18-7.453-49 [Reserved]  
 18-7.453-50 Notice of delay.  
 18-7.453-51 Program progress reports.  
 18-7.453-52 Date of incurrence of costs.  
 18-7.453-53 Contractor's independent research program.  
 18-7.453-54—18-7.453-56 [Reserved]  
 18-7.453-57 Federal, State, and local taxes.  
 18-7.453-58 Excusable delays.  
 18-7.454—18-7.459 [Reserved]  
 18-7.460 Short form clauses for cost-reimbursement research contracts with nonprofit institutions (including educational institutions).  
 18-7.460-1 Definitions.  
 18-7.460-2 Limitation of cost—allowable cost and payment.  
 18-7.460-3 Government property.  
 18-7.460-4 Subcontracts.  
 18-7.460-5 Insurance-liability to third persons.  
 18-7.460-6 Records.  
 18-7.460-7 Release of information.  
 18-7.460-8 Property rights in inventions.  
 18-7.460-9 Data and inspection.  
 18-7.460-10 Authorization and consent.  
 18-7.460-11 Notice and assistance regarding patent and copyright information.  
 18-7.460-12 Security.  
 18-7.460-13 Disputes.  
 18-7.460-14 Termination.  
 18-7.460-15 Buy American Act.  
 18-7.460-16 Nondiscrimination in employment.  
 18-7.460-17 Covenant against contingent fees.  
 18-7.460-18 Officials not to benefit.  
 18-7.460-19 Convict labor.  
 18-7.461 Additional clauses.

AUTHORITY: §§ 18-7.000 to 18-7.461 issued under 42 U.S.C. 2473(b) (1).

### § 18-7.000 Scope of part.

This part sets forth uniform clauses to be used by all NASA procurement offices in contracts for supplies and services entered into by NASA, except in contracts to be performed outside the United States, its possessions, and Puerto Rico (hereafter referred to as foreign contracts). The clauses to be used in foreign contracts will be as prescribed on a case-by-case basis.

### Subpart 18-7.1—Clauses for Fixed-Price Supply Contracts

#### § 18-7.100 Scope of subpart.

This subpart sets forth uniform clauses for use in fixed-price supply contracts as defined in § 18-7.102.

#### § 18-7.101 [Reserved]

#### § 18-7.102 Applicability.

As used throughout this subpart, the term "fixed-price supply contract" means any contract entered into either by formal advertising or by negotiation, including letter contracts [except notices of award, contracts placed under Small Purchases Procedures, and amendments or supplemental agreements which do not effect new procurement], at a fixed-price (with or without provision for price redetermination, escalation or other form of price revision), and for supplies other than construction, alteration, or repair

of buildings, bridges, roads or other kinds of real property; experimental, developmental or research work; or facilities to be provided by the Government under a facilities contract.

#### § 18-7.103 Required clauses.

The following clauses will be inserted in all fixed-price supply contracts.

#### § 18-7.103-1 Definitions.

##### DEFINITIONS (SEPTEMBER 1962)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Administrator" means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Administrator.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

(d) The term "NASA" means the National Aeronautics and Space Administration.

Additional definitions may be included, provided they are not inconsistent with the foregoing clause or the provisions of these regulations.

#### § 18-7.103-2 Changes.

##### CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

In the foregoing clause the period of "30 days" within which any claim for adjustment must be asserted may be varied not to exceed "60 days."



**§ 18-7.103-3 Extras.****EXTRAS (SEPTEMBER 1962)**

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

**§ 18-7.103-4 Variation in quantity.****VARIATION IN QUANTITY (SEPTEMBER 1962)**

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

**§ 18-7.103-5 Inspection.****INSPECTION (SEPTEMBER 1962)**

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: Provided, That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Accept-

ance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer periods as may be specified elsewhere in this contract.

**§ 18-7.103-6 Responsibility for supplies.****RESPONSIBILITY FOR SUPPLIES (SEPTEMBER 1962)**

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

**§ 18-7.103-7 Payments.**

Insert the following clause; except, in letter contracts insert clause 4 of NASA Form 551-3.

**PAYMENTS (SEPTEMBER 1962)**

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either \$1,000 or 50 percent of the total amount of this contract.

In contracts for the furnishing of transportation and accessorial services, there will be substituted for the word "proper" above, the words "properly certified."

**§ 18-7.103-8 Assignment of claims.****ASSIGNMENT OF CLAIMS (SEPTEMBER 1962)**

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract

provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

In negotiated procurement, where a Contractor is indebted to the Government as a result of dealings with NASA or other Government agencies, the last sentence, of paragraph (a) of the "Assignment of Claims" clause, commonly referred to as the "no-set-off" provision, will be omitted if such action is requested by other Government agencies or if it otherwise appears to be appropriate to protect the interests of the Government.

**§ 18-7.103-9 Additional bond security.****ADDITIONAL BOND SECURITY (SEPTEMBER 1962)**

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

**§ 18-7.103-10 Federal, State, and local taxes.**

Insert the appropriate clause set forth in § 18-11.401-1 or 11.401-2(b).

**§ 18-7.103-11 Default.**

In accordance with the requirements of § 18-8.707, insert the clause set forth therein.

**§ 18-7.103-12 Disputes.****DISPUTES (SEPTEMBER 1962)**

(a) Except as otherwise provided in this contract, any dispute concerning a question



of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Administrator. The decision of the Administrator or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Contracting Officer.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

#### § 18-7.103-13 Renegotiation.

RENEGOTIATION (SEPTEMBER 1962)

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.) as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in Section 103g of the Renegotiation Act of 1951, as amended.

#### § 18-7.103-14 [Reserved]

#### § 18-7.103-15 Soviet-controlled areas.

In accordance with the requirements of § 18-6.403, insert the clause set forth therein, and include, in the Schedule of the contract, the list of Soviet-controlled areas.

#### § 18-7.103-16 Eight-Hour Law of 1912—overtime compensation.

Insert the clause set forth in § 18-12.303-1. Note the prefatory language required by § 18-12.303-2 for use in contracts with a state or political subdivision thereof.

#### § 18-7.103-17 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18-12.604.

#### § 18-7.103-18 Nondiscrimination in employment.

Insert the clause set forth in § 18-12.802.

#### § 18-7.103-19 Officials not to benefit.

OFFICIALS NOT TO BENEFIT (SEPTEMBER 1962)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

#### § 18-7.103-20 Covenant against contingent fees.

Insert the clause set forth in § 18-1.503.

#### § 18-7.103-21 Termination for convenience of the Government.

Insert the appropriate clause set forth in § 18-8.701.

#### § 18-7.103-22 Authorization and consent.

Insert the clause set forth in § 18-9.103(a).

#### § 18-7.103-23 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18-9.105.

#### §§ 18-7.103-24—18-7.103-52 [Reserved]

#### § 18-7.103-53 Order of precedence.

ORDER OF PRECEDENCE (SEPTEMBER 1962)

To the extent of any inconsistency between any of the following, which are listed in the order of their precedence, the item of higher precedence governs, unless otherwise specified:

- (a) The Schedule;
- (b) The Terms and Conditions of the Invitation for Bids;
- (c) The Additional General Provisions;
- (d) The General Provisions;
- (e) The Specifications; and
- (f) The Drawings.

#### § 18-7.104 Clauses required to be used when applicable.

#### § 18-7.104-1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of § 18-12.4, insert in fixed-price supply contracts which involve construction work, the clauses listed below which are set forth in § 18-12.403-1:

Davis-Bacon Act.  
Eight-Hour Laws—Overtime Compensation.  
Apprentices.  
Payroll Records and Payrolls.  
Copeland ("Anti-kickback") Act—Nonrebate of Wages.  
Withholding of Funds to Assure Wage Payment.  
Subcontracts—Termination.

(b) In accordance with the requirements of § 18-6.207, insert in all contracts for construction, except those executed on standard Form 19 and NASA Form 177W, the clause entitled "Buy American," as set forth in § 18-6.207(c).

#### § 18-7.104-2 [Reserved]

#### § 18-7.104-3 Buy American Act.

In accordance with the requirements of § 18-6.1, insert the clause set forth in § 18-6.104-5.

#### § 18-7.104-4 Notice to the Government of labor disputes.

Wherever work is to be performed and a work stoppage would result in delay in an urgent NASA program, insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (SEPTEMBER 1962)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify its next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

#### § 18-7.104-5 Patent indemnity.

Under the circumstances specified in § 18-9.104, the clause set forth therein may be included in the contract.

#### § 18-7.104-6 Filing of patent applications.

In accordance with the requirements of § 18-9.107, insert the clause set forth therein.

#### § 18-7.104-7 Property rights in inventions.

In accordance with the requirements of § 18-9.101-2, insert the clause set forth in NASA PR 9.101-2(b). Where the contract is with a member of the Manufacturers Aircraft Association, the provision set forth in § 18-9.101-2(c) is authorized.

#### § 18-7.104-8 [Reserved]

#### § 18-7.104-9 Rights in data.

In accordance with the requirements of § 18-9.203, insert the clause set forth in § 18-9.203-2 and, if applicable, paragraph (j) from § 18-9.203-3.

#### § 18-7.104-10 [Reserved]

#### § 18-7.104-11 [Reserved]

#### § 18-7.104-12 Security requirements.

Insert the following clause in all contracts which are classified "Confidential" or higher and in other contracts which may require access to classified information or material:

SECURITY REQUIREMENTS (SEPTEMBER 1962)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" or higher.

(b) NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Checklist (DD Form 254), or other written notification.

(c) The Contractor agrees to execute, if it has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department as-



signed security cognizance over the Contractor's facility. To the extent the Government has indicated, as of the date of this contract, or thereafter indicates a security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) the Security Agreement (DD Form 441), including the Industrial Security Manual for Safeguarding Classified Information in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department assigned security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility, and representatives of NASA, shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any such equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

#### § 18-7.104-13 [Reserved]

#### § 18-7.104-14 Utilization of small business concerns.

In accordance with the instructions in § 18-1.707-3(a), insert the clause contained therein.

#### § 18-7.104-15 Examination of records.

The following clause will be inserted in all negotiated fixed-price supply contracts in excess of \$2,500.

#### EXAMINATION OF RECORDS (SEPTEMBER 1962)

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have ac-

cess to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

#### § 18-7.104-16 [Reserved]

#### § 18-7.104-17 Convict labor.

In accordance with the requirements in § 18-12.2, insert the clause set forth in § 18-12.203.

#### § 18-7.104-18 Priorities, allocations and allotments.

In accordance with the requirements of § 18-1.307-2, insert the clause set forth therein.

#### § 18-7.104-19 [Reserved]

#### § 18-7.104-20 Utilization of concerns in labor surplus areas.

The "Utilization of Concerns in Labor Surplus Areas" clause set forth below will be inserted in all contracts in amounts which may exceed \$5,000, except in:

(a) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico;

(b) Contracts for services which are personal in nature; and

(c) Contracts for construction.

#### UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS (SEPTEMBER 1962)

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) persistent labor surplus area concerns which are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; (v) small business concerns which are not labor surplus area concerns.

#### § 18-7.104-21 Limitation on withholding of payments.

(a) Except as provided in (b) below, the following clause shall be inserted in contracts which include more than one clause of Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

#### LIMITATION ON WITHHOLDING OF PAYMENTS (SEPTEMBER 1962)

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; provided, that this limitation shall not apply to—

(1) Withholdings pursuant to any clause relating to wages or hours of employees;

(2) Withholdings not specifically provided for by this contract; and

(3) The recovery of overpayments.

(b) The clause set forth in (a) above is not required in letter contracts or where—

(1) The contracting officer determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or

(2) All of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them is being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause set forth in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

#### § 18-7.104-22 Small business subcontracting program.

In accordance with the requirements of § 18-1.707, insert the clause set forth in § 18-1.707-3(b).

#### § 18-7.104-23 Subcontracts.

(a) The clause set forth below will be included in contracts which include a price redetermination or incentive provision.

#### SUBCONTRACTS (SEPTEMBER 1962)

(a) The Contractor shall give specific advance notification to the Contracting Officer of any proposed subcontract hereunder which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total amount of this contract.

(b) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total amount of this contract, or (3) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (4) is on a time-and-material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contract agrees that no subcontract placed under this contract shall provide



for payment on a cost-plus-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the acceptability of the subcontract price, unless such approval specifically provides that it constitutes a determination of the acceptability of the subcontract price.

(e) The Contracting Officer may approve all or any part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (b) above.

(b) If the contract does not include a price redetermination or incentive provision, the clause set forth below may be included in the contract:

#### SUBCONTRACTS (SEPTEMBER 1962)

No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts, or work herein contracted for without the written approval of the Contracting Officer as to sources.

#### § 18-7.104-24 Government-furnished property.

In accordance with the requirements of § 18-13.502, insert the appropriate clause set forth therein.

#### § 18-7.104-25 Special tooling.

In accordance with the requirements of § 18-13.504, insert the clause therein.

#### § 18-7.104-26 Changes to Make-or-Buy Program.

In accordance with the requirements of § 18-3.9, insert the clause set forth in § 18-3.902(h).

#### § 18-7.104-27 Payment for overtime and shift premiums.

In accordance with the requirements of § 18-12.102, insert the clause set forth in § 18-12.102-3(h) (2).

#### §§ 18-7.104-28—18-7.104-34 [Reserved]

#### § 18-7.104-35 Progress payments.

The policies and procedures set forth in paragraph 504 of Appendix E of ASPR, concerning the use of progress payments in formally advertised procurements, will be followed by NASA procurement offices. The provisions to be included in the invitation for bids and the "Progress Payments" clauses authorized for use pursuant to paragraph 504 are authorized for use in accordance with the instructions contained therein except that, the short form "Progress Payments" clauses set forth in (a) and (b) below may be used in lieu of the ASPR clauses whenever it is estimated that the procurement will be less than \$100,000.

(a) *Progress Payments Labor and Material Clause (Short Form).*

PROGRESS PAYMENTS (SHORT FORM CLAUSE BASED ON BOTH DIRECT LABOR AND MATERIAL COSTS OR WHEN LIMITED TO EITHER LABOR OR MATERIAL) (SEPTEMBER 1962)

Upon request of the Contractor, progress payments shall be made to the Contractor

from time to time as work progresses, in amounts approved by the Contracting Officer, upon the following terms and conditions:

##### (a) Computation of Amounts

(1) Unless a smaller amount is requested, each progress payment shall be 85 percent of the Contractor's cumulative costs of direct labor performed and material acquired [strike out inapplicable language if limited to a single direct cost] for performance of this contract; less the sum of previous progress payments. In no event, however, may the amount of unliquidated progress payments exceed ----- percent of the total contract price of items and services not yet delivered, invoiced to and accepted by the Government; also, the aggregate amount of progress payments made may not exceed ----- percent of the total contract price. [These percentages shall be the same as in (b) below.]

(2) Contractor's costs above mentioned must be reasonable, allocable to this contract and consistent with generally accepted accounting principles.

(b) Recovery of Progress Payments. Except as otherwise provided in this contract, payments by the Government for materials delivered, invoiced to and accepted by the Government shall be reduced by ----- percent and the amount of the reduction applied against progress payments previously made until such time as the total of all progress payments has been liquidated. [The percentage to be inserted here and in (a) (1) above should be calculated as those in the following example: If the base for progress payments is 85 percent of the cost of direct labor and material and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation would be at a rate not less than 59.5 percent (85 x 70) of the contract price or delivered items.]

(c) Reduction of Suspension. The Government reserves the right to withhold or reduce progress payments and to increase the liquidation rate if in the opinion of the Contracting Officer the Contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(d) Title to Material and Work. When any progress payment is made under this contract, title to material acquired and work performed under this contract shall vest in the Government, and title to all like property thereafter acquired or produced by the Contractor and properly chargeable to this contract under generally accepted accounting practices shall vest in the Government. The Contractor shall repay to the Government an amount equal to that portion of the unliquidated progress payments allocable to material lost, stolen, destroyed or damaged. Upon completion of performance of all obligations of the Contractor under this contract, title to all property not delivered to and accepted by the Government under this contract and to which title had vested in the Government under this contract shall vest in the Contractor.

(e) Records and Reports. The Contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the Contractor's books, records and accounts.

(f) Default. If this contract is terminated for default, the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments, less any amounts payable to the Contractor in accordance with the default clause.

(g) Reservation of Rights. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

tion to any other rights and remedies provided by law or under this contract.

##### (b) *Progress Payments Total Costs Clause (Short Form).*

PROGRESS PAYMENTS (SHORT FORM "TOTAL COSTS" CLAUSE) (SEPTEMBER 1962)

Upon request of the Contractor, progress payments shall be made to the Contractor from time to time as work progresses, in amounts approved by the Contracting Officer upon the following terms and conditions:

##### (a) Computation of Amounts

(1) Unless a smaller amount is requested, each progress payment shall be 70 percent of the Contractor's cumulative total costs under this contract, less the sum of any previous progress payments. In no event, however, may the aggregate amount of progress payments made exceed 70 percent of the total contract price.

(2) The Contractor's costs must be reasonable, allocable to this contract, consistent with sound and generally accepted accounting principles, and may include depreciation or amortization allowance. Such costs shall exclude amounts for materials to which the Contractor has not acquired title.

(3) At no time shall unliquidated progress payments exceed 70 percent of the total contract price of the items and services not yet delivered and invoiced to and accepted by the Government.

(b) Recovery of Progress Payments. Except as otherwise provided in this contract, payments by the Government for materials delivered, invoiced and accepted shall be reduced by 70 percent of the contract price of such items and the amount of the reduction applied against progress payments previously made until such time as the total of all progress payments has been recovered.

(c) Reduction or Suspension. The Government reserves the right to withhold or reduce progress payments and to increase the liquidation rate if in the opinion of the Contracting Officer the Contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(d) Title to Material and Work. When any progress payment is made under this contract, title to material acquired and work performed under this contract shall vest in the Government, and title to all like property thereafter acquired or produced by the contractor and properly chargeable to this contract under generally accepted accounting principles shall vest in the Government. The contractor shall repay to the Government an amount equal to that portion of the unliquidated progress payments allocable to material lost, stolen, destroyed or damaged. Upon completion of performance of all obligations of the Contractor under this contract, title to all property and work not delivered to and accepted by the Government under this contract and to which title had vested in the Government under this contract shall vest in the Contractor.

(e) Records and Reports. The Contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the Contractor's books, records and accounts.

(f) Default. If this contract is terminated for default, the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments, less any amounts payable to the Contractor in accordance with the default clause.

(g) Reservation of Rights. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.



### § 18-7.104-36 Preference for United States-Flag Air and Ocean Services.

Under the circumstances stated in § 18-1.14, the clause set forth in § 18-1.1403 will be included in the contract.

### §§ 18-7.104-37—18-7.104-39 [Reserved]

### § 18-7.104-40 Competition in subcontracting.

The following clause will be included in all negotiated contracts over \$10,000, except in firm fixed-price contracts where award is on the basis of effective price competition, or where prices are established by law or regulation.

#### COMPETITION IN SUBCONTRACTING (SEPTEMBER 1962)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

### §§ 18-7.104-41—18-7.104-49 [Reserved]

### § 18-7.104-50 Data requirements.

In accordance with the requirements of § 18-9.202, insert the clause set forth in § 18-9.202-1(e).

### § 18-7.104-51 Approval of contract.

The clause set forth below will be included in the contract when approval thereof by the Director, Procurement and Supply Division, NASA Headquarters, is required.

#### APPROVAL OF CONTRACT (SEPTEMBER 1962)

This contract shall be subject to the written approval of the Director, Procurement and Supply Division, NASA Headquarters, or his duly authorized representative, and shall not be binding until so approved.

### § 18-7.105 Additional clauses.

The following clauses will be inserted in fixed-price supply contracts if it is desired to cover the subject matter thereof.

### § 18-7.105-1 Alterations in contract.

Alterations in contract provisions may be made only in accordance with the provisions of NASA PR 1.109. When alterations are necessary, they will be set forth either in the Schedule or on an Attachment Sheet, preceded by the following clause:

#### ALTERATIONS IN CONTRACT (SEPTEMBER 1962)

The following alterations have been made in the provisions of this contract.

### §§ 18-7.105-2—18-7.105-4 [Reserved]

### § 18-7.105-5 Liquidated damages.

When a liquidated damages provision is to be included in the contract, the clause set forth below will be inserted as paragraph (f) of the "Default" clause (§ 18-8.707) and the present paragraph (f) of that clause redesignated "(g)". In addition, an appropriate implementing provision setting forth the amount of liquidated damages will be included in the Schedule.

(f) (i) In the event the Government exercises its right of termination as provided in paragraph (a) above, the Contractor shall be liable to the Government for excess costs as provided in paragraph (b) above and, in addition, for liquidated damages, in the

amount set forth elsewhere in this contract, as fixed, agreed, and liquidated damages for each calendar day of delay, until such time as the Government may reasonably obtain delivery or performance of similar supplies or services.

(ii) If the contract is not so terminated, notwithstanding delay as provided in paragraph (a) above, the Contractor shall continue performance and be liable to the Government for such liquidated damages for each calendar day of delay until the supplies are delivered or services performed.

(iii) The Contractor shall not be liable for liquidated damages for delays due to causes which would relieve him from liability for excess costs as provided in paragraph (c) of this clause. (September 1962)

### § 18-7.105-6 Bill of materials.

A bill of materials consists of a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind. A bill of materials, with respect to all or part of the supplies to be furnished pursuant to a contract, will be required only if the contracting officer determines that such bill is necessary to develop materials or components requirements for production and maintenance programs, or for other specified purposes. In such event, the contract will specify, with respect to such bill, the following:

(i) The supplies or parts thereof to be covered by the bill of materials;

(ii) The type of bill or bills (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with applicable instructions;

(iii) The compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(iv) The number and kind of copies of such bill to be furnished; and

(v) Delivery dates

In such event, the contract will also include the following clause:

#### BILL OF MATERIALS (SEPTEMBER 1962)

(a) With respect to the supplies to be delivered pursuant to the contract, for which a Bill of Materials is required, the Contractor shall furnish a Bill of Materials in the Required number of copies on Department of Defense Forms 346, and 347, if applicable, or authorized reproductions thereof, in accordance with the instructions specified in the Schedule.

(b) The contractor shall furnish to the Government, at such intervals as designated in the Schedule, revised pages of the Bill of Materials incorporating the effect of any changes, pursuant to the clause hereof entitled "Changes," in the quantity of any material or part, or any other information contained in the Bill of Materials, or a statement that no revision is necessary. A final revision, or statement that no revision is necessary, shall be furnished upon completion of performance of the contract.

(c) The Bill of Materials and all revisions or statements subsequent thereto shall be subject to inspection and acceptance by the Government.

Where a bill of materials is procured by contract separate from the supplies to which such bill of materials relates, such contract will include such of the terms mentioned above as may be appropriate and will specify that the bill of materials will be furnished on DD Forms 346, and 347, if applicable, or authorized repro-

ductions thereof. The contractor will not be required to obtain data for the bill of materials in greater detail from a subcontractor than he is to furnish under the terms of the above clause.

### §§ 18-7.105-7—18-7.105-54 [Reserved]

### § 18-7.105-55 Warranty.

The clauses set forth below are authorized for use when, in the discretion of the contracting officer, the benefits of warranties normally granted to a contractor's commercial customers should be obtained by the Government. Use of either clause (a) or clause (b), as appropriate, is authorized.

#### WARRANTY (SEPTEMBER 1962)

(a) Notwithstanding the provisions of the "Inspections" clause of this contract, the Contractor agrees that the articles delivered under this contract shall be covered by the same warranties as the Contractor customarily offers in connection with the sale of these articles on the commercial market. In the event that differing warranties covering these articles are customarily offered to other purchasers by the Contractor, it is agreed that such warranties shall apply to this contract as are available to the Contractor's most-favored purchaser.

#### WARRANTY (SEPTEMBER 1962)

(b) Notwithstanding the provisions of the "Inspections" clause of this contract, the Contractor agrees that the articles delivered under this contract shall be covered by the same warranties as the Contractor customarily offers in connection with the sale of these articles on the commercial market. In the event that differing warranties covering these articles are customarily offered to other purchasers by the Contractor, it is agreed that such warranties shall apply to this contract as are available to the Contractor's most-favored purchaser. In addition to any other obligations imposed upon the Contractor under any such warranties, and regardless of whether a similar right is customarily offered to other purchasers, the Contractor shall, if so required by the Government within a reasonable time after the giving of notice of defect in accordance with such warranties, correct or replace the defective or nonconforming article with all possible speed at Contractor's cost, including shipping costs, not exceeding usual charges, from the delivery point to the Contractor's plant and return.

### § 18-7.105-56 Guaranty.

The clause set forth below is authorized for use when, in the discretion of the contracting officer, the need for such a guaranty is felt to outweigh the price increase, if any, which the inclusion of such a clause might entail. The period of time within which notice of defect must be given may be varied.

#### GUARANTY (SEPTEMBER 1962)

Notwithstanding the provisions of the "Inspection" clause of this contract, the Contractor guarantees that at the time of delivery thereof the articles provided for under this contract will be free from any defects in material or workmanship and will conform to the requirements of this contract. Notice of any such defect or nonconformance shall be given by the Government to the Contractor within 1 year of the delivery of the defective or nonconforming article. If required by the Government within a reasonable time after such notice, the Contractor shall with all possible speed correct or replace the defective or noncon-



forming article or part thereof. When such correction or replacement requires transportation of the article or part thereof, shipping costs, not exceeding usual charges, from the delivery point to the Contractor's plant and return, shall be borne by the Contractor; the Government shall bear all other shipping costs. This guaranty shall then continue as to corrected or replacing articles or, if only parts of such articles are corrected or replaced, to such corrected or replacing parts, until 1 year after date of redelivery. If the Government does not require correction or replacement of a defective or nonconforming article, the contractor, if required by the Contracting Officer within a reasonable time after the notice of defect or nonconformance, shall repay such portion of the contract price of the article as is equitable in the circumstances.

**§ 18-7.106 Price escalation clauses (established prices).**

This paragraph sets forth uniform clauses for use when it is desired to provide for price escalation in the event of changes in the contractor's established prices. Each clause is preceded by a statement of the conditions under which it may be used.

**§ 18-7.106-1 Escalation clause for basic steel, aluminum, brass, bronze or copper mill products.**

The following price escalation clause is authorized for use in advertised or negotiated fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when an established price exists for the particular supply being procured. The percentage figure to be used in paragraph (d) (3) of the clause shall not exceed 10 percent.

**PRICE ESCALATION (SEPTEMBER 1962)**

(a) The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging and packing, beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising) for like quantities of the supplies covered by this contract.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any established price, and each applicable unit price shall be decreased by the amount of the decrease in the applicable established price. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by formal advertising), or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by

the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions.

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the date set for opening of bids (or the contract date, if this is a negotiated contract rather than one entered into by means of formal advertising).

(2) No unit price shall be increased by an amount greater than the amount of the increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ---- percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, but if the Contractor's request for adjustment is received by the Contracting Officer more than ten days after the effective date of the increase in the Contractor's applicable rate, no adjusted unit price shall be effective earlier than the date of receipt by the Contracting Officer of such request.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation. In such event the Government shall pay for all supplies so delivered at the applicable unit price contained in the Contractor's request, and the contract shall be amended accordingly; provided, that such certification is made within 10 days after receipt of notice of such cancellation, and provided further, that such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (d). In the event this contract is for standard steel supplies, they shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as

requested; provided, that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further, that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested; provided, that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

**§ 18-7.106-2 Escalation clause for non-standard steel items.**

The following price escalation clause is authorized for use in advertised or in negotiated fixed-price supply contracts when—

(a) The contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause; and

(b) The items being procured are non-standard steel items made wholly or in major part of standard steel mill items.

When this clause is included in invitations for bids, Note (8) is inapplicable and will be omitted. Invitations for bids or requests for proposals will instruct bidders or offerors, as appropriate, to complete all blanks in accordance with the applicable notes.

**PRICE ESCALATION (SEPTEMBER 1962)**

(a) The Contractor represents that the unit prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in either (i) the Contractor's rates of pay for labor employed by it, or (ii) the prices which the Contractor charges his manufacturing shops for the steel required in the performance of this contract.

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be ---- percent, and the proportion of the contract unit price attributable to the cost of steel shall be ---- percent. [See Note (1).]

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight time hourly earnings of the Contractor's employees in the ----- shop of the Contractor's plant [see Note (2)] for any particular month. The word "month" as used herein means "calendar month"; provided, however, that if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month." Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of -----, 19-- [see Note



(3)], the month immediately preceding and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month which delivery of supplies is required to be made in accordance with the terms of the contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established or published price to the public [see Note (8)] including all applicable extras of \$----- per ----- [see Note (4)] for ----- [see Note (5)] on -----, 19-- [see Note (6)] and the "current steel index," which shall be the Contractor's established or published price to the public [see Note (8)] of said item including all applicable extras in effect ----- days [see Note (7)] prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery be made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (i) the amount (representing the adjusted cost of labor) obtained by multiplying ----- percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (ii) the amount (representing the adjusted cost of steel) obtained by multiplying ----- percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (iii) the amount equal to ----- percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision); [see Note (1)] provided, however, that any revised contract unit price made pursuant to the provisions of this clause shall in no event exceed 110 percent of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit prices, if any, to be made pursuant to this clause, the Contractor shall be paid the contract unit prices for deliveries made. Within thirty days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (i) the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index," and (ii) the Contractor's established or published prices to the public [see Note (8)] including all applicable extras, for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer or his duly authorized representative, the Contractor shall make available his records used in the computation of the labor indices. After the receipt of such certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with

the provisions of this clause, and this contract shall be amended accordingly.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and materials indices under paragraphs (c) and (d) hereof; provided, however, that as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any item for default on the part of the Contractor, any price revision shall be limited to the quantity of each item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered; provided, however, that in case the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

(i) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

#### NOTES

(1) Bidder insert the same percentage figures for the corresponding blanks in paragraphs (b) and in (e) (i) and (ii). In paragraph (e) (iii), bidder insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Bidder identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Bidder insert the month of bid opening, or the month in which the Contractor submitted his proposal if this is a negotiated contract.

(4) Bidder insert the unit price and unit of measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Bidder identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Bidder insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotiated contract.

(7) Bidder insert the number of days which represents the Contractor's best estimate of the period of time required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) In negotiated procurements of non-standard steel items, when there is no established or published price to the public, or when it is not desirable to use such price, this paragraph may refer to another appropriate price basis, such as an established interplant price.

#### § 18-7.106-3 Escalation clause for standard supplies.

The following price escalation clause is authorized for use in negotiated fixed-price supply contracts for standard supplies for which established prices exist. The clause may be used only when the total contract price is over \$5,000 and delivery is not to be completed within six months after the contract date. The percentage figure to be used in subparagraph (d) (3) of the clause shall not exceed 10 percent. If any standard trade discounts offered by the contractor against his list or catalog price are taken into account in negotiating the contract unit price, the contracting officer's file should contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts.

#### PRICE ESCALATION (SEPTEMBER 1962)

The Contractor warrants that the unit prices stated herein, excluding any part of the prices which reflects requirements for preservation, packaging, and packing beyond standard commercial practice, are not in excess of the Contractor's applicable established prices in effect on the contract date for like quantities of the supplies covered by this contract. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from his list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the contract date; or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed ----- percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or



the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule result from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, within 30 days after receipt of the Contractor's request, cancel without liability to either party the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such cancellation.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or cancellation of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested; provided, that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further, that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor cancels the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested; provided, that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

#### § 18-7.106-4 Escalation clause for semi-standard supplies.

The following price escalation clause is authorized for use in negotiated fixed-price supply contracts for semistandard supplies, the prices of which can be reasonably related to the prices of nearly equivalent standard supplies for which established prices exist. The clause may be used only when the total contract price is over \$5,000 and delivery is not to be completed within six months after the contract date. A clear understanding should be set forth in writing prior to making the contract as to the identity of the standard supply items which are applicable. The percentage figure to be used in subparagraph (d)(3) of the clause shall not exceed 10 percent. If any standard trade discounts offered by the contractor against his list or catalog price are taken into account in negotiating the contract unit price, the contracting officer's file should contain a statement setting forth the list or catalog

price and the discounts. The discounts referred to do not include prompt payment or cash discounts. When the supplies being purchased are standard supplies in all respects except for preservation, packaging, and packing requirements, the following clause should not be used; in such cases the escalation clause for standard supplies in § 18-7.106-3, is the appropriate clause.

#### PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the supplies covered by this contract are supplies which the Contractor customarily offers for sale commercially except for modifications in accordance with the specifications of this contract, and that as of the contract date any differences between the unit prices stated herein and the Contractor's established prices for like quantities of the supplies which are the nearest commercial equivalents of the supplies covered by this contract (herein referred to as "the established prices") are due to compliance with such specifications, and to compliance with any requirements which this contract may contain for preservation, packaging, and packing beyond standard commercial practice. The term "established price" as used in this clause is the net price after applying any applicable standard trade discounts offered by the Contractor from his list or catalog price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each applicable contract unit price shall be decreased by the same percentage that the applicable established price is decreased. Any such decrease in a unit price shall apply to those supplies delivered on and after the effective date of each applicable decrease in the Contractor's established price, and this contract shall be amended accordingly. The Contractor shall certify on each invoice submitted under the contract that each unit price stated therein reflects all decreases, if any, which the Contractor had made in the established price applicable thereto, since the contract date, or shall certify on the final invoice that all such decreases have been applied to supplies delivered on and after the effective date of each such decrease in the Contractor's established prices.

(c) The Contractor may from time to time after the date of this contract and during the performance hereof, by written notice to the Contracting Officer, request an upward adjustment in any of the contract unit prices to be effective as of a date to be specified by the Contractor. Such request shall be acted upon in accordance with the following provisions of this clause.

(d) An upward adjustment in a contract unit price may be made under this clause only in accordance with the following conditions:

(1) Such an upward adjustment shall be made only if the Contractor's applicable established price has increased subsequent to the contract date.

(2) No unit price shall be increased by a percentage greater than the percentage increase in the Contractor's applicable established price.

(3) The aggregate of the increases in any unit price made under this clause shall not exceed \_\_\_\_\_ percent of the original applicable contract unit price.

(4) No adjusted unit price shall be effective earlier than the effective date of the increase in the applicable established price, or the date of receipt by the Contracting Officer of the Contractor's request for adjustment, whichever is the later.

(5) No upward adjustment in unit prices hereunder shall apply to supplies which were

required by the contract delivery schedule to be delivered prior to the effective date of the related increase in the applicable established price, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of paragraph (c) of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule.

(e) In the event the requested upward adjustment in any contract unit price is acceptable to the Contracting Officer, he shall so notify the Contractor, and the contract shall be amended accordingly. In the event the requested upward adjustment is not acceptable to the Contracting Officer, or if the Contracting Officer does not reach an agreement with the Contractor with respect to a price increase, the Contracting Officer may, pursuant to the clause of the contract entitled "Termination for Convenience of the Government," terminate the Contractor's right to proceed with performance of that portion of the contract which is undelivered at the time of such termination.

(f) During the period after the Contractor has requested an upward adjustment, and prior to an agreement between the parties with respect to the request, or termination of the contract pursuant to paragraph (e), the Contractor shall continue deliveries according to the terms of the contract. The Contractor shall be paid for such deliveries at the applicable increased unit prices as requested; provided, that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d), and provided further, that if the parties agree on an increase less than that requested, payments previously made at the requested amount shall be adjusted accordingly. If the Contracting Officer neither reaches an agreement with the Contractor on the requested adjustment, nor terminates the contract, the Contractor shall continue deliveries according to the terms of the contract, and the Contractor shall be paid therefor at the applicable increased unit prices as requested; provided, that such requested increases satisfy all the conditions and do not exceed the limitations of paragraph (d).

#### § 18-7.107 Price escalation clause (labor and material).

(a) The following price escalation clause is authorized for use in negotiated fixed-price supply contracts where (1) the price exceeds \$50,000, (2) the period of performance exceeds six months, (3) there is no major element of design engineering or developmental work involved in producing the items being procured, and (4) one or more identifiable labor or material cost factors are subject to change.

(b) The Schedule shall describe in detail the types of labor and materials subject to escalation, the labor rates (including fringe benefits, if any), and unit prices of materials, which may be increased or decreased, and the quantities of labor and specified materials allocable to each unit of supplies to be delivered under the contract. The following sample format illustrates a type of schedule description that may be used:

The following types of labor and material are subject to price escalation pursuant to clause \_\_\_\_\_ of this contract.



## RULES AND REGULATIONS

## CONTRACT ITEM No. 1

| Types of labor and materials | Rates of pay and material prices                                 | Quantities and direct costs per unit of procurement |
|------------------------------|------------------------------------------------------------------|-----------------------------------------------------|
| Drill press operator.....    | \$3.00/hour, no fringe benefits included..                       | 20 min.—\$1.00.                                     |
| Welder.....                  | \$2.75/hour.<br>.05/hour—vacation pay.<br>.20/hour—pension plan. |                                                     |
| Copper sheet.....            | \$3.00.....                                                      | 10 min.—\$.50.                                      |
| Purchased parts:             | \$.40 lb.....                                                    | 2 lb.—\$.80.                                        |
| (1) ABC tube X8721.....      | \$1.00 each.....                                                 | 3 ea.—\$3.00.                                       |
| (2) XYZ part No. 9348.....   | \$.50 each.....                                                  | 10 ea.—\$5.00.                                      |

The percentage figure to be used in subparagraph (d) (vi) of the clause will not exceed 10 percent.

(c) In negotiating adjustments under the clause, the contracting officer will consider work in process and materials on hand at the time of changes in labor rates or materials prices since these elements may have a significant impact on equitable price adjustments.

## PRICE ESCALATION (SEPTEMBER 1962)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs of performance resulting from increases in (i) the Contractor's rates of pay for labor or (ii) the unit prices for materials, set forth in the Schedule.

(b) If at any time during the performance of this contract there is an increase or decrease in the rates of pay for labor or unit prices for materials set forth in the Schedule, the Contractor shall notify the Contracting Officer thereof within 60 days of such increase or decrease or within such further period as may be approved in writing by the Contracting Officer, but in any event not later than final payment under the contract. Such notice shall include the Contractor's proposal for an equitable adjustment in the contract unit prices to be negotiated in accordance with paragraph (c) below and shall be accompanied by data, in such form as the Contracting Officer may require, explaining (i) the causes, (ii) the effective date, and (iii) the amount, both of the increase or decrease and of the Contractor's proposal for an equitable adjustment.

(c) Promptly upon receipt of any notice and data described in (b) above, the Contractor and the Contracting Officer shall negotiate an equitable adjustment, and the effective date thereof, in the contract unit prices to reflect any change in the cost of performance of this contract due to the increase or decrease in rates of pay for labor or unit prices for materials set forth in the Schedule; provided, however, that such negotiations may be postponed by the Contracting Officer until an accumulation of such increases and decreases results in an adjustment allowable under (d) (v). The equitable adjustment, and the effective date thereof, shall be set forth in an amendment or supplemental agreement to this contract. Such amendment or supplemental agreement shall also revise the rates of pay for labor or unit prices for materials set forth in the Schedule to reflect the increase or decrease therein. Failure of the parties to agree to an adjustment under this clause shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." Pending agreement on, or determination of, any such adjustment and its

effective date, the Contractor shall continue performance.

(d) Notwithstanding any other provision of this clause, any price adjustment under this clause shall be subject to the following limitations:

(i) There shall be no adjustment for supplies whose production cost is not affected by a change in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(ii) There shall be no adjustment other than for increases or decreases in the rates of pay for labor or unit prices for materials set forth in the Schedule;

(iii) There shall be no adjustment for any increase or decrease in the quantities of labor or materials set forth in the Schedule for each item to be delivered hereunder;

(iv) No upward adjustment shall apply to supplies which were required by the contract delivery schedule to be delivered prior to the effective date of the adjustment, unless the Contractor's failure to deliver supplies in accordance with the delivery schedule results from causes beyond the control and without the fault or negligence of the Contractor meaning of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery schedule;

(v) Except as provided in (e) below, there shall be no adjustment for any change in rates of pay for labor or unit prices for materials which would not result in a net change of at least three percent of the then current total contract price; and

(vi) There shall be no adjustment upward which would cause any adjusted contract unit price to exceed \_\_\_\_ percent of the corresponding original contract unit price.

(e) If, after delivery of the last unit called for by this contract, either party requests negotiation pursuant to (c) above, the limitations of (d) (v) shall not apply.

(f) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor or unit prices for materials set forth in the Schedule or that he has given notice of all such decreases in compliance with (b) above.

(g) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the costs of labor and materials during all reasonable times until three years after final payment under this contract.

## § 18-7.108 Incentive price revision clause.

When, in accordance with the provisions of § 18-3.4, the fixed-price incentive contract described in 32 CFR 3.404-4(a)(2) is to be used, the following clause will be made a part of the contract. As to each item, which is to be subject to incentive price revision, the contract schedule will set forth the target cost, target profit, and target

price. Subparagraph (d) (2) of the following clause may be modified to provide, within the price ceiling, for a ceiling, a floor, or both on the final profit.

## INCENTIVE PRICE REVISION (SEPTEMBER 1962)

(a) Definitions. As used in this clause, the following terms shall have the meanings set forth below:

(i) The term "target price" means the unit price of any supplies or services under this contract, which is subject to adjustment in accordance with this clause, and is composed of "target cost" and "target profit."

(ii) The term "target cost" means that part of the target price which, at the time of its negotiation, was agreed to as the estimate of the unit cost of the supplies or services being procured.

(iii) The term "target profit" means that part of the target price which, at the time of its negotiation, was agreed to as the unit profit for furnishing the supplies or services at a cost equal to the target cost.

(iv) The term "total target price" means the sum of the target prices.

(v) The term "total target cost" means the sum of the target costs.

(vi) The term "total target profit" means the sum of the target profits.

(vii) The term "total adjusted cost" means the final negotiated cost of all supplies or services which are subject to price revision under this clause.

(viii) The term "total adjusted price" means the final contract price, as computed in accordance with this clause, for all supplies or services which are subject to price revision under this clause.

(b) General. The supplies or services identified in the Schedule as Items \_\_\_\_\_ are subject to price revision in accordance with the provisions of this clause; provided, that in no event shall the total adjusted price of such Items exceed \_\_\_\_\_ percent (\_\_\_\_ %) of the total target cost. Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(c) Submission of Data. Within \_\_\_\_\_ (\_\_\_\_) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those Items listed in paragraph (b) above, the Contractor shall submit, in such form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such Items, and (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such Items.

(d) Price Revision. Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total adjusted price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total adjusted cost reasonably incurred or to be incurred for and properly allocable to the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total adjusted price shall be established by adding to the total adjusted cost an allowance for profit determined as follows:



|                                         |                                                                                                                                          |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| When the total adjusted cost is—        | The allowance for profit is—                                                                                                             |
| Equal to the total target cost.....     | Total target profit.                                                                                                                     |
| Greater than the total target cost..... | Total target profit less ----- percent (-----%)<br>of the amount by which the total adjusted cost<br>exceeds the total target cost.      |
| Less than the total target cost.....    | Total target profit less ----- percent (-----%)<br>of the amount by which the total adjusted cost<br>is less than the total target cost. |

(e) Records. (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The Contractor shall segregate the costs of any supplies or services for which the price is fixed and not subject to revision under this clause. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis in connection with the furnishing of the supplies or services identified in paragraph (b) above as being subject to price revision (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence, pertinent to the performance of this contract.

(f) Certification. An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, that such costs are correct to the best of his knowledge and belief, and that the accompanying estimate of costs to complete is considered reasonable.

(g) Subcontracts. (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve a total price in excess of \$10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract, and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of \$2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(h) Contract Modifications. The total adjusted price, as determined in accordance with paragraph (d) above, shall be evidenced by a modification to this contract signed by

the Contractor and the Contracting Officer and shall apply to supplies delivered and to services performed under this contract.

(i) Adjustment of Payments. Pending execution of the contract modification referred to in paragraph (h) above, the Contractor shall bill prices as provided in this paragraph. The billing prices shall be the target prices set forth in this contract; provided, that if at any time it appears that the then current billing prices do not provide for payments consistent with the provisions of subparagraph (j) (3) below, the parties may agree to revised billing prices, which shall be reflected in a modification to this contract. Billing prices are for the sole purpose of providing for interim payments and shall not affect the determination of the total adjusted price under paragraph (d) above. After execution of the contract modification referred to in paragraph (h) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total adjusted price and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(j) Limitation on Payments. (1) This paragraph (j) shall not apply after final price revision to the full extent permitted by this contract.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contracting Officer a cumulative statement setting forth:

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) That portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (d) (2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any 1 quarterly statement the amount of (2) (iv) above exceeds the sum of 2(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments,

such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (4), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (4) modified as outlined in (i) above.

(k) Disagreements. If the Contractor and the Contracting Officer fail to agree upon the total adjusted price within 60 days after the date on which the data required by (c) above are to be submitted, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder.

(l) Termination. If this contract is terminated prior to establishment of the total adjusted price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

In the event the contract calls for spare parts or other supplies or services, which are to be ordered under a provisioning document or Government option, and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (m) will be included in such clause:

(m) Spare Parts. Spare parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such spare parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be target prices. Target cost and profit covering such spare parts, other supplies, or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree.

#### § 18-7.109 Price redetermination.

Pending publication of regulations covering price redetermination, the clauses set forth in ASPR 7-109 may be used in accordance with instructions set forth therein.

#### Subpart 18-7.25 Clauses for Cost-Reimbursement Type Supply Contracts

##### § 18-7.200 Scope of subpart.

This subpart sets forth uniform contract clauses for use in cost-reimburse-



ment type supply contracts as defined in § 18-7.202.

#### § 18-7.201 [Reserved]

#### § 18-7.202 Applicability.

As used throughout this subpart, the term "cost-reimbursement type supply contract" means any contract, including letter contracts [except notices of award, contracts placed under Small Purchases Procedures, and amendments or supplemental agreements which do not effect new procurement], entered into on a cost or cost-plus-fixed-fee basis (see § 18-3.400) for supplies other than (a) the construction, alteration, or repair of buildings, bridges, roads or other kinds of real property; (b) experimental, developmental, or research work; or (c) facilities to be provided by the Government under a facilities contract as defined in § 18-13.101-17.

#### § 18-7.203 Required clauses.

The following clauses will be inserted in all cost-reimbursement type supply contracts.

##### § 18-7.203-1 Definitions.

Insert the clause set forth in § 18-7.103-1. Additional definitions may be included, provided they are not inconsistent with such clause or the provisions of these regulations.

##### § 18-7.203-2 Changes.

###### CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, where the supplies to be furnished are to be specifically manufactured for the Government in accordance therewith; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fixed fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

If requested by the contractor, the provision for the right of the Government to order changes in place of inspection or point of acceptance may be deleted from the "Changes" clause set forth above.

##### § 18-7.203-3 Limitation of cost.

Insert the following clause; except, in letter contracts insert clause 3 of NASA Form 551-3 set forth in § 18-16.550.

###### LIMITATION OF COST (SEPTEMBER 1962)

(a) It is estimated that the total cost to the Government exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which it expects to incur in the performance of this contract in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule, or if at any time, the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

##### § 18-7.203-4 Allowable cost, fixed fee and payment.

Insert the following clause; except, in letter contracts insert clause 4 of NASA Form 551-3 set forth in § 18-16.550.

###### ALLOWABLE COST, FIXED FEE, AND PAYMENT (SEPTEMBER 1962)

(a) For the performance of this contract, the Government shall pay to the Contractor:

(i) the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract; and

(B) the terms of this contract; and

(ii) such fixed fee, if any, as may be provided for in the Schedule.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall

be made to the Contractor as specified in the Schedule; provided, however, that after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or one hundred thousand dollars (\$100,000), whichever is less, shall have been set aside.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that such claims are not known to the Contractor on the date of the execution of the release; and provided, further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment whichever is earlier;



(C) Claims for reimbursement of costs, including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) When there is included in this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the 1-year period after final payment.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

#### § 18-7.203-5 Inspection of supplies and correction of defects.

##### INSPECTION OF SUPPLIES AND CORRECTION OF DEFECTS (SEPTEMBER 1962)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery thereof and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of the supplies or lots of supplies last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any supplies or lots of supplies which at the time of delivery thereof are defective in material or workmanship or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) hereof, the cost of any such replacement or correction shall be included in Allowable Cost determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Such supplies or lots of supplies shall not be tendered thereafter for acceptance unless the former requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct

such supplies or lots of supplies, the Government (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) hereof, the Government may at any time require the correction or replacement by the Contractor, without cost to the Government, of supplies or lots of supplies which are defective in material or workmanship, or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require correction or replacement by the Contractor, without cost to the Government, of any such defective supplies or lots of supplies if the defects or failures are caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) Corrected supplies or replaced supplies shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

#### § 18-7.203-6 Assignment of claims.

In accordance with the requirements of § 18-7.103-8, insert the clause set forth therein.

#### § 18-7.203-7 Records.

(a) Except as provided in (b) below, insert the following clause.

##### RECORDS (SEPTEMBER 1962)

(a) (1) The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract. The Contractor's accounting procedures and practices shall be subject to the approval of the Contracting Officer; provided, however, that no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the costs properly applicable to this contract are readily ascertainable therefrom.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by any authorized representative of the Administrator or of the Comptroller General.

(3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within 2 years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through the Contracting Officer such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) for a period of 3 years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in subparagraph (4) (B) above, the Contractor may in fulfillment of his obligation to retain his records as required by this clause substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of 2 years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.



## RULES AND REGULATIONS

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a) (6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or the Administrator, or any of their duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only, excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(b) In the case of contracts which establish separate periods of performance, the following alternate subparagraph (a) (4) may be substituted for the corresponding subparagraph of the clause prescribed by (a) above.

(a) (4) Except for documentary evidence delivered to the Government pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) for a period of three years from the date of payment of the voucher or invoice submitted by the Contractor after the completion of the work performed during any separate period of performance established by this contract or by any amendment or supplemental agreement, without regard to former or subsequent periods of performance, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A), (B), or (C) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(C) If the Contractor plans to destroy any records sooner than three years after the date of the voucher or invoice to be submitted after the completion of the work performed during the total of the periods of performance established by this contract and all amendments and supplemental agreements thereto, which voucher or invoice shall be designated "completion voucher" or "completion invoice," he shall give written notice to the Contracting Officer and to the Comptroller General of the United States, specifying any records which he plans to destroy after the expiration of 90 days from the receipt of such notice, and shall retain any records which either the Contracting Officer or the Comptroller General, by written notice within 90 days after receipt of the Contractor's notice, requires to be retained for a further specified period of time. (September 1962)

#### § 18-7.203-8 Subcontracts.

SUBCONTRACTS (SEPTEMBER 1962)

(a) The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is

on a cost, cost-plus-a-fee, time and material, or labor-hour basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) In the case of a proposed subcontract which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of \$10,000, including any fee; or (ii) is proposed to exceed \$100,000; or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed \$100,000; the advance notification required by (a) above shall include:

(1) a description of the supplies or services to be called for by the subcontract;

(2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof, including current, complete correct cost or pricing data accompanied, except when the requirement is specifically waived by the Contracting Officer, by a certificate from the subcontractor to the effect that all cost or pricing data has been considered by the subcontractor in preparing his proposal and that such data is current, and has been provided the Contractor; and

(4) identification of the type of contract proposed to be used.

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost or cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time and material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (c) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" pro-

vision set forth in paragraph (j) of the clause prescribed by Section 7.108 of the NASA Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price types of subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

In paragraph (c) of the "Subcontracts" clause set forth above, the percentage and amount set forth in (ii) thereof may be varied, the dollar amount in (iii) may be increased, and in (i) and (iv) thereof dollar amounts not in excess of \$10,000 may be established below which the prior written consent of the contracting officer need not be obtained.

#### § 18-7.203-9 Utilization of small business concerns.

In accordance with the requirements set forth in NASA PR 1.707-3(a), insert the clause contained therein.

#### § 18-7.203-10 Termination.

Insert the clause set forth in § 18-8.702.

#### § 18-7.203-11 Excusable delays.

Insert the clause set forth in § 18-8.708.

#### § 18-7.203-12 Disputes.

Insert the clause set forth in § 18-7.103-12.

#### § 18-7.203-13 Renegotiation.

Insert the clause set forth in § 18-7.103-13.

#### § 18-7.203-14 [Reserved]

#### § 18-7.203-15 Convict labor.

In accordance with the requirements of § 18-12.2, insert the clause set forth in § 18-12.203.

#### § 18-7.203-16 Eight-Hour Law of 1912—Overtime compensation.

Insert the clause set forth in § 18-12.303-1. Note the introductory language required by § 18-12.302-2 for use in contracts with a State or political subdivision thereof.

#### § 18-7.203-17 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18-12.604.

#### § 18-7.203-18 Nondiscrimination in employment.

Insert the clause set forth in § 18-12.802.



**§ 18-7.203-19 Officials not to benefit.**

Insert the clause set forth in § 18-7.103-19.

**§ 18-7.203-20 Covenant against contingent fees.**

Insert the clause set forth in § 18-1.503.

**§ 18-7.203-21 Government property.**

Insert the clause set forth in § 18-1.503.

**§ 18-7.203-22 Insurance-liability to third persons.****INSURANCE—LIABILITY TO THIRD PERSONS  
(SEPTEMBER 1962)**

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as the Contracting Officer may from time to time require with respect to performance under this contract) provided, that the Contractor may with the approval of the Contracting Officer maintain a self-insurance program; and provided further that with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as the Contracting Officer may from time to time require or approve, and with insurers approved by the Contracting Officer.

(b) The Contractor agrees, to the extent and in the manner required by the Contracting Officer, to submit for the approval of the Contracting Officer any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder.

(c) The Contractor shall be reimbursed: (i) for the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupied or used by the Contractor or rented to the Contractor, or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, his agents, servants or employees; provided, such liabilities are represented by final judgments or by settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by the Contracting Officer or (III) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor

in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause; provided, such cost would constitute Allowable Cost under the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment."

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith; provided however, that the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

**§ 18-7.203-23 Authorization and consent.**

Insert the clause set forth in § 18-9.103(a).

**§ 18-7.203-24 Notice and assistance regarding patent and copyright infringement.**

Insert the clause set forth in § 18-9.105.

**§ 18-7.203-25 Soviet-controlled areas.**

In accordance with requirements of § 18-6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18-6.401-2.

**§ 18-7.203-26 Utilization of concerns in labor surplus areas.**

In accordance with the requirements of § 18-7.104-20, insert the clause set forth therein.

**§ 18-7.203-27 Payment for overtime and shift premiums.**

In accordance with the requirements of § 12.102, insert the clause set forth in § 18-12.102-3(h) (1).

**§ 18-7.203-28 Competition in subcontracting.**

Insert the clause set forth in § 18-7.104-40.

**§§ 18-7.203-29—18-7.203-49 [Reserved]****§ 18-7.203-50 Payment of royalties.**

Insert the clause set forth in § 18-9.108(a), except that in contracts with members of the Manufacturers Aircraft Association the clause set forth in § 18-9.108(b) may be substituted therefor.

**§ 18-7.203-51 Estimated cost and fixed fee.**

Normally, the clause set forth below will be used as the Schedule provision

covering the estimated cost and fixed fee. However, the clause may be modified at the discretion of the contracting officer.

**ESTIMATED COST AND FIXED FEE  
(SEPTEMBER 1962)**

The estimated cost of this contract is ----- exclusive of the fixed fee of -----  
The total of estimated cost and fixed fee is -----

**§ 18-7.203-52 Payment of fixed fee.**

Normally, the clause set forth below will be used as the Schedule provision covering the payment of fixed fees. However, at the discretion of the contracting officer, the clause may be modified.

**PAYMENT OF FIXED FEE (SEPTEMBER 1962)**

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the Contracting Officer.

**§ 18-7.204 Clauses required to be used when applicable.****§ 18-7.204-1 Clauses for contracts involving construction work.**

(a) In accordance with the requirements of § 18-12.4, insert in cost-reimbursement type supply contracts, which involve construction work, the clauses listed below which are set forth in § 18-12.403-1:

Davis-Bacon Act.

Eight-Hour Laws—Overtime Compensation.

Apprentices.

Payroll Records and Payrolls.

Copeland ("Anti-Kickback") Act—Nonre-

bate of Wages.

Withholding of Funds to Assure Wage Pay-

ments.

Subcontracts—Termination.

(b) In accordance with the requirements of NASA PR 6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 177W, the clause entitled "Buy American" set forth in NASA PR. 6.207(c).

**§ 18-7.204-2 [Reserved]****§ 18-7.204-3 Buy American Act.**

In accordance with the requirements of § 18-6.1, insert the clause set forth in § 18-6.104-5.

**§ 18-7.204-4 Notice to the Government of labor disputes.**

In accordance with the requirements of § 18-7.104-4, insert the clause set forth therein.

**§ 18-7.204-5 [Reserved]****§ 18-7.204-6 Filing of patent applications.**

In accordance with the requirements of § 18-9.107, insert the clause set forth therein.

**§ 18-7.204-7 Property rights in inventions.**

In accordance with the requirements of § 18-9.101-2, insert the clause set forth in § 18-9.101-2(b). Where the contract is with a member of the Manufacturers Aircraft Association, the provision set forth in § 18-9.101-2(c) is authorized. Where the work to be performed is not the type described in



§ 18-9.101-2, the "Property Rights in Inventions" clause may be deleted when contained in a printed contract form.

**§ 18-7.204-8 [Reserved]**

**§ 18-7.204-9 Rights in data.**

In accordance with the requirements of § 18-9.203, insert the clause set forth in § 18-9.203-2 and, if applicable, paragraph (j) from § 18-9.203-3.

**§ 18-7.204-10 [Reserved]**

**§ 18-7.204-11 [Reserved]**

**§ 18-7.204-12 Security requirements.**

Insert the following clause in all contracts which are classified "Confidential" or higher and in other contracts which may require access to classified information or material:

**SECURITY REQUIREMENTS (SEPTEMBER 1962)**

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" or higher.

(b) The NASA shall notify the Contractor of the security classification of this contract and the elements thereof and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) The Contractor agrees to execute, if he has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department assigned security cognizance over the Contractor's facility. To the extent the Government has indicated, as of the date of this contract, or thereafter indicates a security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) The Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) Any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility, and representatives of NASA, shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract, the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost and fixed fee (if any) shall, to the extent

appropriate, be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause of this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding paragraph (e) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into thereunder may contain, in lieu of paragraph (e) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee (if any) of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved.

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

**§ 18-7.204-13 [Reserved]**

**§ 18-7.204-14 [Reserved]**

**§ 18-7.204-15 Priorities, allocations, and allotments.**

In accordance with requirements of § 18-1.307-2 insert the clause set forth therein.

**§ 18-7.204-16 Negotiated overhead rates.**

In contracts with commercial concerns, where negotiated overhead rates are to be used, the clause set forth below will be used in accordance with the provisions of 32 CFR, Section III, Part 7.

**NEGOTIATED OVERHEAD RATES (SEPTEMBER 1962)**

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of each period specified in the Schedule shall submit to the Contracting Officer or his authorized representative, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with ASPR, Section XV, Part 2, as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of final overhead rates for any period, the Contractor

shall be reimbursed either at negotiated provisional rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer or his authorized representative, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in the Schedule shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled "Disputes."

**§ 18-7.204-17 [Reserved]**

**§ 18-7.204-18 Limitation on withholding of payments.**

In accordance with the requirements in § 18-7.104-21, insert the clause set forth therein.

**§ 18-7.204-19 Small business subcontracting program.**

In accordance with the requirements of § 18-1.707, insert the clause set forth in NASA PR 1.707-3(b).

**§ 18-7.204-20 Changes to Make-or-Buy Program.**

In accordance with the requirements of § 18-3.9, insert the clause set forth in § 18-3.902(h).

**§§ 18-7.204-21—18-7.204-25 [Reserved]**

**§ 18-7.204-26 Preference for United States-flag air and ocean services.**

In accordance with the requirements of NASA PR 1.14, insert the clause set forth in § 18-1.1403.

**§ 18-7.204-27 [Reserved]**

**§ 18-7.204-28 General Services Administration supply sources.**

The clause set forth in § 18-5.907 will be included in contracts in accordance with the instructions set forth therein.

**§§ 18-7.204-29—18-7.204-49 [Reserved]**

**§ 18-7.204-50 Data requirements.**

In accordance with the requirements of § 18-9.202, insert the clause set forth in § 18-9.202-1(e).

**§ 18-7.204-51 Approval of contract.**

The clause set forth in § 18-7.104-51 will be included when approval of the contract by the Director, Procurement and Supply Division, NASA Headquarters, is required.

**§ 18-7.204-52 [Reserved]**

**§ 18-7.204-53 Limitation of Government's obligation.**

Where funding to complete the entire contract is not available at the time it is entered into and specific approval of the Director, Procurement and Supply Division, NASA Headquarters, has been obtained for the use of such a clause, the clause set forth below will be included in the contract, together with an implementing Schedule provision.



**LIMITATION OF GOVERNMENT'S OBLIGATION  
(SEPTEMBER 1962)**

(a) It is estimated that the total cost to the Government, inclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost and fixed fee set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. The fixed fee for complete performance of this contract is specified in the Schedule.

(b) The sum presently available for payment and allotted to this contract, the items covered thereby and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is anticipated that from time to time additional funds will be allotted to this contract up to the full estimated cost, including any fixed fee. When additional funds are allotted from time to time for continued performance of the work, the parties shall agree as to the applicable estimated period of contract performance which shall be covered by such funds and the contract schedule amended accordingly. The Contractor agrees to perform or have performed work on this contract up to the point at which in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract, entitled "Termination," the total amount paid and payable by the Government pursuant to any settlement including cost and fixed fee under paragraph (e) of such clause would, in the exercise of reasonable judgment by the Contractor, approximate the total amount at the time allotted to this contract. The Contractor shall not be obligated to continue performance of the work beyond such point.

(c) The Government shall not be obligated to reimburse the Contractor for costs incurred (including amounts payable in respect to subcontracts and termination settlement costs) and to pay any fixed fee to which the Contractor may be entitled in excess of the total amount from time to time allotted to this contract. However, when and to the extent that the total amount allotted to this contract has been increased, any costs incurred by the Contractor and any fixed fee to which the Contractor may be entitled, prior to the increase and in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred and fee earned after such increase in amount allotted.

(d) In the event funds allotted are considered by the Contractor to be inadequate to cover the work to be performed for the period set forth in the Schedule, the Contractor shall notify the Contracting Officer in writing when within the next thirty (30) days the work will reach a point, at which, in the event of termination of this contract for the convenience of the Government pursuant to the clause of this contract entitled "Termination" the total amount paid and payable by the Government pursuant to a settlement including cost and fixed fee under paragraph (e) of such clause will approximate eighty-five percent (85%) of the total amount then allotted to the contract. The notice shall state the estimated date when such point will be reached and the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. The Contractor shall, thirty (30) days prior to the end of the period specified in the Schedule, advise the Contracting Officer in writing as to the estimated amount of additional funds which will be required on the basis of the obligation for performance in accordance with paragraph (b) of this clause, for the timely performance of the work under the contract for such further period as may be specified in the Sched-

ule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule, or an agreed date in substitution therefor, the Contracting Officer will, upon written request of the Contractor, terminate this contract on such date, or on a date to be specified in such request, on which the Contractor, in the exercise of his reasonable judgment, estimates that he will have discharged his obligation to perform hereunder in accordance with paragraph (b) of this clause, whichever is later, pursuant to the provisions of the clause of this contract entitled "Termination."

(e) When additional funds are allotted from time to time for continued performance of the work under this contract, the parties shall agree as to the applicable period of contract performance which shall be covered by such funds, and the provisions of paragraphs (b), (c) and (d) of this clause shall apply in like manner to such additional allotted funds and substituted date pertaining thereto, and the contract shall be amended accordingly.

(f) The Government may at any time prior to termination allot additional funds for this contract, and, with the consent of the Contractor, after notice of termination, may rescind such termination in whole or in part, and allot additional funds for this contract.

(g) In the event that sufficient amounts are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled, subject to the limitations of paragraph (c) of this clause, to a percentage of the fixed fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

(h) Nothing in this clause shall affect the right of the Government to terminate this contract pursuant to the clause of this contract entitled "Termination."

(i) For the purpose of this clause, the allotment or allotments specified in the Schedule shall not be decreased without the consent of the Contractor.

(j) This clause shall be applicable and the clause of this contract entitled "Limitation of Cost" inapplicable until such time as an amount equal to the total estimated cost and fee set forth in the Schedule is allotted to this contract and thereafter the clause of this contract entitled "Limitation of Cost" shall be applicable and this clause inapplicable.

**§ 18-7.204-54 [Reserved]**

**§ 18-7.204-55 NASA PERT System.**

In contracts to which the NASA PERT System, is applicable, the clause set forth below will be included in the contract.

**NASA PERT SYSTEM (MARCH 1962)**

(a) The NASA PERT system shall be implemented and maintained in accordance with the NASA PERT Handbook as in effect on the date of this contract and as it may be amended from time to time.

(b) In the event of an amendment to the NASA PERT Handbook which changes substantially the amount of detail required to be reported or the system of reporting, such amendment shall be treated as a change under the clause of this contract entitled "Changes."

(c) The system shall be implemented by a PERT team consisting of representatives of the Contractor and the NASA. Implementation by the PERT team will commence within 30 days after the date of this contract. The number of networks required and the scope of each network will be established by NASA, after giving due consideration to recommendations of the PERT team. The Contractor's participation, as a member of this team, shall include but not be limited to the following:

Formulation of recommendations as to the number and scope of networks required, development of the networks required, identification of events and activities comprising each of the networks required, and initial estimates of activity times supported by initial estimates of direct labor (in man-hours) associated with each activity time. Implementation of NASA PERT will be complete within 90 days after the date of this contract. Reporting against and updating of individual networks shall commence as soon as individual networks are developed and not await completion of all networks.

(d) Reporting against networks established shall be as described in the NASA PERT Handbook. These reports shall be submitted on alternate Fridays (the reporting date) specified by NASA via mail, TWX, telephone, or such other manner as necessary to reach the NASA Project Manager by the Monday (A.M.) following the report date. The computer input data reported shall be current as of the reporting date.

In the case of major contracts, the requirement for completion of the implementation of NASA PERT System within 3 months after the date of the contract may be extended up to 6 months.

**§ 18-7.204-56 NASA financial management reporting.**

When financial management reporting on NASA Form 533 is required, the appropriate clause set forth in (a) or (b) below will be included in the contract. The number of copies of NASA Form 533 to be submitted by the contractor will be specified in the Schedule of the contract.

(a) The clause set forth below will be used when the NASA PERT System is not applicable to the contract.

**NASA FINANCIAL MANAGEMENT REPORTING  
(WITHOUT PERT) (MARCH 1962)**

Financial Management Reports shall be submitted by the Contractor on NASA Form 533 in accordance with the instructions on the reverse of the form and in the number of copies set forth in the contract Schedule. The line entries for subdivisions of work and elements of cost to be reported within the total contract shall be determined by NASA, after giving due consideration to the recommendations of the Contractor. Subsequent changes and/or additions in the line entries to be reported shall be similarly determined. The Contracting Officer shall notify the Contractor of each change and addition and the reporting period to which each shall apply. Financial Management Reporting shall commence with a report for the first calendar month following the date of this contract.

(b) When the NASA PERT System is applicable to the contract, the following clause will be used:

**NASA FINANCIAL MANAGEMENT REPORTING  
(WITH PERT) (MARCH 1962)**

(a) Financial Management Reports shall be submitted by the Contractor on NASA Form 533 in accordance with the instructions on the reverse of the form and in the number of copies set forth in the contract Schedule. The line entries for subdivisions of work and elements of cost to be reported within the total contract shall be determined by NASA, after giving due consideration to the recommendations of a combined PERT/Financial Report implementation team consisting of Contractor and NASA representatives. Subsequent changes and/or additions in the line entries to be reported will be similarly determined. The Contracting Officer will notify the Contractor of each change



and addition and the reporting period to which each will apply.

(b) The line entries for subdivisions of work selected for reporting shall be compatible with NASA PERT networks in order to permit integrated time/cost management control and reporting. Establishment of these subdivisions of work shall proceed simultaneously with the development of NASA PERT networks.

(c) Financial Management reporting shall commence with a report for the first calendar month following the date of this contract. Until completion of the implementation of PERT, the line entries of the report shall reflect a summarized breakdown which is anticipated will approximate the more detailed entries based on PERT networks. Beginning with the first calendar month following completion of the implementation of PERT, the report shall be submitted with line entries fully compatible with PERT networks.

#### § 18-7.205 Additional clauses.

The following clauses will be inserted if it is desired to cover the subject matter thereof.

##### § 18-7.205-1 Alterations in contract.

The clause set forth in § 18-7.105-1 may be inserted.

##### § 18-7.205-2 [Reserved]

##### § 18-7.205-3 [Reserved]

##### § 18-7.205-4 Bill of materials.

Under the circumstances stated in § 18-7.105-6, the clause set forth therein may be inserted.

##### § 18-7.205-5 Federal, State, and local taxes.

At the discretion of the contracting officer and when requested by the contractor, the clause set forth in § 18-11.402 is authorized for use in cost-reimbursement type contracts.

##### §§ 18-7.205-6—18-7.205-49 [Reserved]

##### § 18-7.205-50 Notice of delay.

The clause set forth below is authorized for use in situations where it is desirable to provide for notice by the contractor of anticipated delays in performance.

##### NOTICE OF DELAY (SEPTEMBER 1962)

If the Contractor becomes unable to complete the contract work at the time specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may, in his discretion, extend the time specified in the Schedule for such period as he deems advisable.

##### § 18-7.205-51 Program progress reports.

Where the procedures set forth in NASA Management Instruction 6-2-3 relating to the NASA Program Management System are applicable, the clause set forth below is authorized for use to obtain periodic reports from the contractor concerning the planning and pro-

gress of the program called for by the contract.

##### PROGRAM PROGRESS REPORTS (SEPTEMBER 1962)

(a) The Contractor shall, within ninety (90) days after receipt of a duly executed copy of this contract, submit to the Contracting Officer copies of its Master Summary Schedule to include (i) its planned manpower build-up requirements for performance of this contract, and (ii) a summary of its planned program, with starting and completing dates, as applicable, for accomplishing the pertinent planning, research, development, test, production, operation, delivery, or other milestones representing the significant actions or steps required to accomplish program objectives. Any material change in the foregoing areas shall be reported to the Contracting Officer by revision of the information called for herein.

(b) On specific milestones designated by the NASA Project Manager, the Contractor shall report program progress biweekly on NASA Form 491, in conformity with the instructions printed on the Form.

(c) If and when reporting by the Contractor under the NASA PERT System shall commence, the requirements of paragraph (b) above shall cease as of a date to be prescribed by the Contracting Officer.

##### § 18-7.205-52 Date of incurrence of costs.

The clause set forth below is authorized for use when specific coverage of anticipatory costs is considered desirable.

##### DATE OF INCURRENCE OF COSTS (SEPTEMBER 1962)

The Contractor shall be entitled to reimbursement for costs incurred on or after \_\_\_\_\_ which, if incurred after this contract had been entered into, would have been reimbursable under the provisions of this contract.

##### § 18-7.205-53 Contractor's independent research program.

When the Property Rights in Inventions clause is included in the contract (see § 18-9.101-2) and it is determined that the contractor maintains an independent research program, the clause set forth in § 18-9.101-6 may be included in the Schedule at the contractor's request.

##### § 18-7.205-54 Reports of work.

A Reports of Work clause is not prescribed for cost-reimbursement type supply contracts. When it is desired to include such a clause, however, the clause set forth in § 18-7.302-54 may be used or it may serve as a model in drafting the desired clause.

#### Subpart 18-7.3—Clauses for Fixed-Price Research and Development Contracts

##### § 18-7.300 Scope of subpart.

This subpart sets forth uniform clauses for use in fixed-price research and development contracts as defined in § 18-7.301.

##### § 18-7.301 Applicability.

As used throughout this subpart, the term "fixed-price research and development contract" means any contract, including letter contracts (except notices of award, contracts placed under Small Purchases Procedures, and amendments or supplemental agreements which do

not effect new procurement) which (a) is entered into on a fixed-price basis, (b) is in an amount exceeding \$2,500, and (c) is for experimental, developmental, or research work.

##### § 18-7.302 Required clauses.

The following clauses will be inserted, as required, in all fixed-price research and development contracts except as otherwise indicated in this Subpart 18-7.3. See § 18-7.350 for short form clauses.

##### § 18-7.302-1 Definitions.

Insert the clause set forth in § 18-7.103-1. Additional definitions may be included: *Provided*, They are not inconsistent with such clause or the provisions of these Regulations.

##### § 18-7.302-2 Payments.

Insert the following clause; except, in letter contracts insert clause 4 of NASA Form 551-3 set forth in § 18-16-550.

##### PAYMENTS (SEPTEMBER 1962)

The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

##### § 18-7.302-3 Standards of work.

##### STANDARDS OF WORK (SEPTEMBER 1962)

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

##### § 18-7.302-4 Inspection.

##### INSPECTION (SEPTEMBER 1962)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

Where a more detailed provision covering inspection is desired, as where the primary contract objective is delivery of end items other than designs, drawings or reports, the clause set forth below will be substituted for this clause, unless the contracting officer determines that use of the longer clause is impracticable.

##### INSPECTION (SEPTEMBER 1962)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Of-



ficer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except, as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

#### § 18-7.302-5 Assignment of claims.

In accordance with the instructions in § 18-7.103-8, insert the clause set forth therein.

#### § 18-7.302-6 Examination of records.

Insert the clause set forth in § 18-7.104-15.

#### § 18-7.302-7 Federal, State, and local taxes.

Insert the clause set forth in § 18-11.401-1 or 11.401-2(b) in accordance with the requirements of § 18-11.401.

#### § 18-7.302-8 Utilization of small business concerns.

In accordance with the requirements of § 18-1.707-3(a), insert the clause set forth therein.

#### § 18-7.302-9 Default.

In accordance with the requirements of § 18-8.710, insert the clause set forth therein.

#### § 18-7.302-10 Termination for the convenience of the Government.

In accordance with the requirements of § 18-8.701 or 8.704-1, insert the appropriate clause.

#### § 18-7.302-11 Disputes.

Insert the clause set forth in § 18-7.103-12.

#### § 18-7.302-12 Renegotiation.

Insert the clause set forth in § 18-7.103-13.

#### § 18-7.302-13 Buy American Act.

In accordance with the requirements of § 18-6.1, insert the clause set forth in § 18-6.104-5.

#### § 18-7.302-14 Convict labor.

In accordance with the requirements of § 18-12.2, insert the clause set forth in § 18-12.203.

#### § 18-7.302-15 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18-12.604.

#### § 18-7.302-16 Eight-Hour Law of 1912—overtime compensation.

Insert the clause set forth in § 18-12.303-1. Note the introductory language required by § 18-12.303-2 for inclusion in contracts with a state or political subdivision thereof.

#### § 18-7.302-17 Nondiscrimination in employment.

Insert the clause set forth in § 18-12.802.

#### § 18-7.302-18 Officials not to benefit.

Insert the clause set forth in § 18-7.103-19.

#### § 18-7.302-19 Covenant against contingent fees.

Insert the clause set forth in § 18-1.503.

#### § 18-7.302-20 [Reserved]

#### § 18-7.302-21 Authorization and consent.

In accordance with the requirements in § 18-9.103, insert the clause set forth in § 18-9.103(b).

#### § 18-7.302-22 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18-9.105.

#### § 18-7.302-23 Property rights in inventions.

In accordance with the requirements of § 18-9.101-2, insert the clause in § 18-9.101-2(b). A variation from the clause in § 18-9.101-2(b), for use in contracts with members of the Manufacturers Aircraft Association, is set forth in § 18-9.101-2(c).

#### § 18-7.302-24 Rights in data.

If data is to be delivered under the contract, insert the clause set forth in NASA PR 9.203-1. See § 18-9.203 for requirements.

#### § 18-7.302-25 Security requirements.

Insert the clause set forth in § 18-7.104-12 except that if the contract is with an educational institution and is awarded on the basis of no profit, insert the clause set forth in § 18-7.451-24.

#### § 18-7.302-26 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18-7.104-20, insert the clause set forth therein.

#### §§ 18-7.302-27—18-7.302-53 [Reserved]

#### § 18-7.302-54 Reports of work.

A clause requiring the Contractor to furnish reports of work will be included in the Schedule of the contract. An approved clause is set forth below. Changes in this clause may be made to meet the particular requirements of a procurement. Consideration should be given in each case to the desirability of providing for intermittent reports as well as, for example, where a contractor completes a significant unit of work which merits reporting.

##### REPORTS OF WORK (SEPTEMBER 1962)

(a) Monthly Progress Reports. The Contractor shall submit separate monthly progress reports of all work accomplished during each month of contract performance. Reports shall be in narrative form, and brief and informal in content. Monthly reports shall include:

- (1) A quantitative description of over-all progress;
- (2) An indication of any current problems which may impede performance, and proposed corrective action; and
- (3) A discussion of the work to be performed during the next monthly reporting period.

Monthly reports shall be submitted in ----- copies, plus a reproducible copy.

(b) Quarterly Progress Reports. The Contractor shall submit separate quarterly reports of all work accomplished during each three-month period of contract performance. In addition to factual data, these reports shall include a separate analysis section which interprets the results obtained, recommends further action, and relates occurrences to the ultimate objectives of the contract work. Sufficient diagrams, sketches, curves, photographs and drawings shall be included to convey the intended meaning.

Quarterly reports shall be submitted in ----- copies, plus a reproducible copy.

(c) Final Report. The Contractor shall submit a final report which documents and summarizes the results of the entire contract work, including recommendations and conclusions based on the experience and results obtained. The final report shall include tables, graphs, diagrams, curves, sketches, photographs and drawings in sufficient detail to comprehensively explain the results achieved under the contract. The final report shall be submitted in ----- copies, plus a reproducible copy.

#### § 18-7.303 Clauses required to be used when applicable.

The following clauses will be inserted when applicable in all fixed-price research and development contracts except as indicated in this Subpart. See § 18-7.350 for short form clauses.

#### § 18-7.303-1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of § 18-12.4, insert in fixed-price research and development contracts which involve construction work the clauses listed below which are set forth in § 18-12.403-1:

Davis Bacon Act.  
Eight-Hour Laws—Overtime Compensation.  
Apprentices.  
Payroll Records and Payrolls.  
Copeland ("Anti-Kickback") Act—Nonrebate of Wages.



## RULES AND REGULATIONS

Withholding of Funds to Assure Wage Payments.  
Subcontracts—Termination.

(b) In accordance with the requirements of § 18-6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 177W, the clause entitled "Buy American", as set forth in § 18-6.207(c).

§ 18-7.303-2 Filing of patent applications.

In accordance with the requirements of § 18-9.107, insert the clause set forth therein.

§§ 18-7.303-3—18-7.303-5 [Reserved]

§ 18-7.303-6. Priorities, allocations, and allotments.

In accordance with requirements of § 18-1.307-2, insert the clause set forth therein.

§ 18-7.303-7 Government-furnished property.

In accordance with the requirements of § 18-13.502-2 or 13.505-2, insert the appropriate clause.

§ 18-7.303-8 Soviet-controlled areas.

In accordance with the requirements of § 18-6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18-6.401-2.

§ 18-7.303-9 Notice to the Government of labor disputes.

In accordance with the requirements of § 18-7.104-4, insert the clause set forth therein.

§ 18-7.303-10 Limitation on withholding of payments.

In accordance with the requirements of § 18-7.104-21, insert the clause set forth therein.

§ 18-7.303-11 Small business subcontracting program.

In accordance with the provisions of § 18-1.707, insert the clause set forth in § 18-1.707-3(b).

§ 18-7.303-12 Subcontracts.

Insert the clause set forth in § 18-7.104-23(a) when required under the circumstances stated therein; if the clause set forth in § 18-7.104-23(a) is not required, the clause set forth in § 18-7.104-23(b) may be inserted.

§ 18-7.303-13 Changes to Make-or-Buy Program.

In accordance with the requirements of § 18-3.9, insert the clause set forth in § 18-3.902(h).

§ 18-7.303-14 Payment for overtime and shift premiums.

In accordance with the requirements of § 18-12.102, the clause set forth in § 18-12.102-3(h) (2) will be included in the contract.

§§ 18-7.303-15—18-7.303-22 [Reserved]

§ 18-7.303-23 Progress payments.

In accordance with the requirements of § 18-7.104-35, insert the appropriate clause as set forth therein.

§§ 18-7.303-24—18-7.303-26 [Reserved]

§ 18-7.303-27 Competition in subcontracting.

In accordance with the requirements of § 18-7.104-40, insert the clause set forth therein.

§§ 18-7.303-28—18-7.303-49 [Reserved]

§ 18-7.303-50 Data requirements.

In accordance with the requirements of § 18-9.202, insert the clause set forth in NASA PR 9.202-1(e).

§ 18-7.303-51 Approval of contract.

In accordance with the requirements of § 18-7.104-51, insert the clause set forth therein.

§ 18-7.303-52 Preference for United States-flag air and ocean services.

Under the circumstances described in § 18-1.14, insert the clause set forth in § 18-1.1403.

§ 18-7.303-53 [Reserved]

§ 18-7.303-54 Materials reports.

In all research and development contracts calling for hardware or for research and development on materials, the clause set forth below will be inserted in the Schedule of the contract. Generally, the Schedule provision will be required in all contracts calling for space vehicles, satellites, rockets, propulsion units, rocket motors, satellite and rocket components, instrumentation, and payloads. Contracting officers should discuss the need for such a clause with the project officers in every instance where it appears that the contract may call for research and development on materials, regardless of whether or not the contract falls within one of the categories enumerated above.

## MATERIALS REPORTS (SEPTEMBER 1962)

The Contractor shall furnish to the Contracting Officer, within 30 days after the end of each six-month period of the contract and within 60 days after the completion of the work for the final period of the contract, a separate technical report, prepared in the form of a reproducible master copy suitable for reproduction by multilith, describing in summary form those tests, experiments, developments, studies, and other efforts of the Contractor relating to materials and their processing for use in fulfilling the technical requirements of this contract, which are either conducted or planned during the six-month or final period of this contract to be covered by the report. Such technical report shall include not only positive results, but also negative results which the Contractor considers significant to record, i.e., discarded efforts, unsuccessful tests, experiments, or developments. If no such tests, experiments, developments, studies, or other efforts are conducted or planned during any six-month or final period, the Contractor shall so notify the Contracting Officer in writing in lieu of furnishing the technical report.

§ 18-7.303-55 NASA PERT System.

In accordance with the requirements of § 18-7.204-55, insert the clause set forth therein.

§ 18-7.303-56 NASA financial management reports.

In accordance with the requirements of § 18-7.204-56, insert the appropriate clause set forth therein.

§ 18-7.304 Additional clauses.

The following clauses will be inserted if it is desired to cover the subject matter thereof.

§ 18-7.304-1 Changes.

## CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications, (ii) method of shipment or packing, (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change: *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 18-7.304-2 Alterations in contract.

The clause set forth in § 18-7.105-1 may be inserted.

§ 18-7.304-3 [Reserved]

§ 18-7.304-4 Bill of materials.

In accordance with the instructions in § 18-7.105-6, the clause set forth therein may be used.

§§ 18-7.304-5—18-7.304-49 [Reserved]

§ 18-7.304-50 Notice of delay.

In accordance with the instructions in § 18-7.205-50, the clause set forth therein is authorized for use.

§ 18-7.304-51 Program progress reports.

In accordance with the instructions in § 18-7.205-51, insert the clause set forth therein.

§§ 18-7.304-52—18-7.304-53 [Reserved]

§ 18-7.304-59 Price escalation.

The clauses set forth in §§ 18-7.106 and 18-7.107 are authorized for use in



accordance with the instructions set forth therein.

#### § 18-7.304-60 Incentive price revision.

The clause set forth in § 18-7.108 is authorized for use in accordance with the instructions set forth therein, provided that the advance approval of the Director, Procurement and Supply Division, NASA Headquarters, has been obtained.

#### § 18-7.304-61 Special tooling.

Where special tooling is to be acquired by the contractor, the clause set forth in § 18-13.504 is authorized for use in accordance with instructions contained therein.

#### §§ 18-7.305-18-7.349 [Reserved]

#### § 18-7.350 Short form clauses for fixed-price research contracts with non-profit institutions.

Notwithstanding the provisions of §§ 18-7.302 and 18-7.303, the short form clauses set forth or referred to in this Section 7.350 will be used in fixed-price contracts for basic or applied research with nonprofit institutions of higher education, or with nonprofit institutions whose primary purpose is the conduct of scientific research, when a short form contract is desired.

#### § 18-7.350-1 Definitions.

Insert the clause set forth in § 18-7.103-1.

#### § 18-7.350-2 Payment.

##### PAYMENT (SEPTEMBER 1962)

(a) Payment will be made to the Contractor as set forth in the Schedule upon submission of status reports indicating the portion of the work which has been performed and after acceptance by the Contracting Officer. The status reports shall also contain a concise statement of the work which has been performed.

(b) A prerequisite to final payment is the submission by the Contractor of a statement of the amount of funds expended in the performance of this contract and the furnishing to the Contracting Officer, and his acceptance, of the technical reports and patent reports required by this contract.

(c) Status reports, statements of funds expended and technical reports required by this contract shall be submitted by the Contractor directly to the Chief of the NASA Office of Research Grants and Contracts, Washington, D.C., who is the representative of the Contracting Officer for the purpose of determining the acceptability of such reports and statements.

#### § 18-7.350-3 Technical reports and data.

##### TECHNICAL REPORTS AND DATA (SEPTEMBER 1962)

(a) Upon completion of the work under this contract, the Contractor shall submit the number of copies required in the Schedule of a complete and final technical report of its findings and conclusions together with any original illustrations and photographic negatives. With the prior approval of the Contracting Officer, the Contractor may submit interim technical reports in lieu of the final report at such intervals as may be agreed upon.

(b) The Government may publish, reproduce or use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information and other scientific data resulting from this contract.

#### § 18-7.350-4 Government-furnished property.

Insert the appropriate clause set forth in § 18-13.505.

#### § 18-7.350-5 Release of information.

##### RELEASE OF INFORMATION (SEPTEMBER 1962)

It is the intent of NASA that the useful research information obtained under this contract be published either by NASA or in technical journals. Reports to be published by NASA shall be prepared insofar as practicable in accordance with NASA editorial form. Three (3) copies of the manuscript containing research information obtained under this contract shall be furnished to NASA prior to release of the information by formal oral presentation or for publication in a technical journal. Appropriate credits to NASA will be included in any formal oral presentation or published article. Twenty (20) reprints of articles published in journals shall be furnished to NASA.

#### § 18-7.350-6 Security.

##### SECURITY (SEPTEMBER 1962)

If the subject matter of this contract is classified in the interest of national security, or if it appears that performance on the contract will require access to classified information, the Contractor shall be governed by a Department of Defense Security Agreement (DD Form 441), and the attachment thereto, "The Industrial Security Manual for Safeguarding Classified Information." Further, information or material is developed pursuant to this contract which appears to require protection in the interest of national security, the Contractor shall notify NASA immediately in order that the appropriate classification category may be assigned, and a Security Agreement executed, if necessary.

#### § 18-7.350-7 Property rights in inventions.

Insert the clause set forth in § 18-9.101-2(d).

#### § 18-7.350-8 Disputes.

Insert the clause set forth in § 18-7.103-12.

#### § 18-7.350-9 Termination at the option of the Government.

##### TERMINATION AT THE OPTION OF THE GOVERNMENT (SEPTEMBER 1962)

The performance of work under this contract may be terminated by the Government in whole or in part, whenever the Contracting Officer shall determine that such action is in the best interest of the Government. If this contract is so terminated, fair compensation for work performed will be provided for the Contractor.

#### § 18-7.350-10 Authorization and consent.

Insert the clause set forth in § 18-9.103(b).

#### § 18-7.350-11 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in NASA PR 9.105.

#### § 18-7.350-12 Buy American Act.

Insert the clause set forth in § 18-6.104-5.

#### § 18-7.350-13 Examination of records.

Insert the clause set forth in § 18-7.104-15.

#### § 18-7.350-14 Nondiscrimination in employment.

Insert the clause set forth in § 18-12.802.

#### § 18-7.350-15 Covenant against contingent fees.

Insert the clause set forth in § 18-1.503.

#### § 18-7.350-16 Officials not to benefit.

Insert the clause set forth in § 18-7.103-19.

#### § 18-7.350-17 Convict labor.

Insert the clause set forth in § 18-12.203.

#### § 18-7.350-18 Additional clauses.

When circumstances justify it, the clauses prescribed in §§ 18-7.302, 18-7.303 and 18-7.304 may be added to or substituted for the clauses set forth in § 18-7.350.1 through § 18-7.350-17, however, care should be exercised to ensure that there are no inconsistencies.

#### Subpart 18-7.4—Clauses for Cost-Reimbursement Type Research and Development Contracts

##### § 18-7.400 Scope of subpart.

This subpart sets forth uniform clauses for use in NASA cost-reimbursement type research and development contracts as defined in § 18-7.401.

##### § 18-7.401 Applicability.

As used throughout this subpart, the term "cost-reimbursement type research and development contract" means any contract, including letter contracts [except notices of award, contracts placed under Small Purchases Procedures, and amendments or supplemental agreements which do not effect new procurement], which (a) is entered into on a cost, cost-sharing, or cost-plus-a-fixed-fee basis, and (b) is for experimental, developmental or research work.

##### § 18-7.402 Required clauses for contracts with fee.

The following clauses will be inserted in all cost-reimbursement type research and development contracts providing for a fee.

##### § 18-7.402-1 Definitions.

Insert the clause set forth in § 18-7.103-1. Additional definitions may be included provided they are not inconsistent with such clause or the provisions of these Regulations.

##### § 18-7.402-2 Limitation of cost.

Insert the following clause; except, in letter contracts insert clause 3 of NASA Form 551-3 set forth in § 18-16.550.

##### LIMITATION OF COST (SEPTEMBER 1962)

(a) It is estimated that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60)



## RULES AND REGULATIONS

days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost then set forth in the Schedule, or if at any time the Contractor has reason to believe that the total cost to the Government, exclusive of any fixed fee, for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in the Schedule, and the Contractor incurred in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

#### § 18-7.402-3 Allowable cost, fixed fee and payment.

Insert the clause set forth in § 18-7.203-4; except, in letter contracts insert clause 4 of NASA Form 551-3 set forth in § 18-16-550.

#### § 18-7.402-4 Standards of work.

Insert the clause set forth in § 18-7.302-3.

#### § 18-7.402-5 Inspection and correction of defects.

##### INSPECTION AND CORRECTION OF DEFECTS (SEPTEMBER 1962)

(a) All work under this contract shall be subject to inspection and test by the Government (to the extent practicable) at all times (including the period of performance) and places, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of its subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, final inspection and acceptance shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than ninety (90) days after the date of such delivery, if final acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of all the end items (other than designs, drawings or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or re-

placement, as directed by the Contracting Officer, any failure by the Contractor to comply with the requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence, except as provided in (d) below. Except as otherwise provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of articles not delivered, may require the delivery of such articles, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract if such failure is due to fraud, lack of good faith or willful misconduct on the part of any one of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of paragraph (b) above shall apply to any corrected or replacement end item or component until six (6) months after its acceptance.

(e) The Contractor shall make its records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace articles which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of

or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

In the foregoing clause, the words "Task Order" or other appropriate designation may be substituted for "Schedule," as appropriate.

#### § 18-7.402-6 Assignment of claims.

In accordance with the requirements in § 18-7.103-8, insert the clause set forth therein.

#### § 18-7.402-7 Records.

Insert the clause set forth in § 18-7.203-7. In the case of contracts which establish separate periods of performance, alternate subparagraph (a) (4), set forth in § 18-7.203-7(b), may be substituted for the corresponding subparagraph of the clause prescribed in § 18-7.203-7(a).

#### § 18-7.402-8 Subcontracts.

(a) Insert the clause set forth in § 18-7.203-8, substituting for paragraph (c) thereof the following paragraph (c):

(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (i) is on a cost of cost-plus-a-fee basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (iv) is on a time and material or labor-hour basis, or (v) has experimental, developmental, or research work as one of its purposes. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c). (September 1962)

(b) The following changes may be made in paragraph (c) above:

(1) The percentage and amount in (ii) may be varied.

(2) The dollar amount in (iii) may be increased.

(3) Dollar amounts not in excess of \$10,000 may be established in (i), (iv) and (v), below which the prior written consent of the Contracting Officer need not be obtained.

#### § 18-7.402-9 Utilization of small business concerns.

In accordance with the requirements of § 18-1.707-3(a), insert the clause set forth therein.

#### § 18-7.402-10 Termination.

In accordance with the requirements of § 18-8.702, insert the appropriate clause set forth therein.

#### § 18-7.402-11 Disputes.

Insert the clause set forth in § 18-7.103-12.

#### § 18-7.402-12 Renegotiation.

Insert the clause set forth in § 18-7.103-13.

#### § 18-7.402-13 Buy American Act.

In accordance with the requirements of § 18-6.1, insert the clause set forth in § 18-6.104-5.



**§ 18-7.402-14 Convict labor.**

In accordance with the requirements in § 18-12.2, insert the clause set forth in § 18-12.203.

**§ 18-7.402-15 Walsh-Healey Public Contracts Act.**

Insert the clause set forth in § 18-12.604.

**§ 18-7.402-16 Eight-Hour Law of 1912—Overtime compensation.**

Insert the clause set forth in § 18-12.303-1. Note the introductory language required by § 18-8.303-2 for inclusion in contracts with a State or political subdivision thereof.

**§ 18-7.402-17 Nondiscrimination in employment.**

Insert the clause set forth in § 18-12.802.

**§ 18-7.402-18 Officials not to benefit.**

Insert the clause set forth in § 18-7.103-19.

**§ 18-7.402-19 Covenant against contingent fees.**

Insert the clause set forth in § 18-1.503.

**§ 18-7.402-20 Authorization and consent.**

Insert the clause prescribed in § 18-9.103(b).

**§ 18-7.402-21 Notice and assistance regarding patent infringement.**

Insert the clause set forth in § 18-9.105.

**§ 18-7.402-22 Property rights in inventions.**

In accordance with the requirements of § 18-9.101-2, insert the clause set forth in § 18-9.101-2(b). If the contract is with a member of the Manufacturers Aircraft Association, see § 18-9.101-2(c) for the variation authorized for use.

**§ 18-7.402-23 Rights in data.**

In accordance with the requirements of § 18-9.203, insert the clause set forth in § 18-9.203-1.

**§ 18-7.402-24 Security requirements.**

Insert the clause set forth in § 18-7.204-12.

**§ 18-7.402-25 Government property.**

Insert the clause set forth in § 18-13.503.

**§ 18-7.402-26 Insurance-liability to third persons.**

(a) Except under the circumstances stated in (b) or (c) below, insert the clause set forth in § 18-7.203-22.

(b) If the contractor claims total immunity from tort liability as a State agency or as a charitable institution, the clause set forth below will be used in lieu of the clause contained in § 18-7.203-22.

**LIABILITY TO THIRD PERSONS (SEPTEMBER 1962)**

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons with respect to loss due to death, bodily injury, or damage to property resulting in any way from the per-

formance of this contract or any subcontract thereunder.

(b) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith. The Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

(c) If the contractor claims partial immunity from tort liability as a state agency or as a charitable institution (as where work may be performed under the contract in a place or under the conditions where the contractor is not immune from tort liability), the paragraph set forth below may be added to the Insurance—Liability to Third Persons clause contained in § 18-7.203-22.

(e) Notwithstanding paragraphs (a) and (c) of this clause, (i) the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder; and (ii) the Contractor need not procure or maintain insurance coverage as provided in paragraph (a) of this clause; provided, the Contractor may obtain any insurance coverage he deems necessary subject to approval by the Contracting Officer as to form, amount, and duration, in which event the Contractor shall be reimbursed (A) for the cost of such insurance and (B) to the extent provided in paragraph (c) above, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount. (September 1962)

**§ 18-7.402-27 Utilization of concerns in labor surplus areas.**

In accordance with the requirements of § 18-7.104-20, insert the clause set forth therein.

**§ 18-7.402-28 Payment for overtime and shift premiums.**

In accordance with the requirements of § 18-12.102-3(d), insert the clause set forth in 12.102-3(h) (i).

**§ 18-7.402-29 Competition in subcontracting.**

Insert the clause set forth in § 18-7.104-40.

**§§ 18-7.402-30 — 18-7.402-49 [Reserved]**

**§ 18-7.402-50 Payment of royalties.**

In accordance with the instructions in § 18-7.203-51, insert the clause set forth in § 18-9.108(a) except that, if the contractor is a member of the Manufacturers Aircraft Association, the clause set forth in § 18-9.108(b) may be substituted therefor.

**§ 18-7.402-51 Estimated cost and fixed fee.**

In accordance with the requirements of § 18-7.203-51, insert the clause set forth therein.

**§ 18-7.402-52 Payment of fixed fee.**

In accordance with the requirements of § 18-7.203-52, insert the clause set forth therein.

**§ 18-7.402-53 [Reserved]**

**§ 18-7.402-54 Reports of work.**

See § 18-7.302-54 for guidance and a clause approved for use.

**§ 18-7.403 Clauses required to be used when applicable.**

The following clauses will be inserted, when applicable, in all cost-reimbursement type research and development contracts providing for a fee.

**§ 18-7.403-1 Clauses for contracts involving construction work.**

(a) In accordance with the requirements of § 18-12.4, insert in cost-reimbursement type research and development contracts which involve construction work the clauses listed below which are set forth in § 18-12.403-1:

Davis-Bacon Act.  
Eight-Hour Laws—Overtime Compensation.  
Apprentices.  
Payroll Records and Payrolls.  
Copeland ("Anti-Kickback") Act—Nonre-bate of Wages.  
Withholding of Funds to Assure Wage Payment.  
Subcontracts—Termination.

(b) In accordance with the requirements of § 18-6.207, insert in all contracts for construction, except those executed on Standard Form 19, and NASA Form 177W, the clause entitled "Buy American," as set forth in § 18-6.207(c).

**§ 18-7.403-2 Filing of patent applications.**

In accordance with the requirements of § 18-9.107, insert the clause set forth therein.

**§ 18-7.403-3 [Reserved]**

**§ 18-7.403-4 [Reserved]**

**§ 18-7.403-5 Excusable delays.**

Insert the clause set forth in § 18-8.708.

**§ 18-7.403-6 [Reserved]**

**§ 18-7.403-7 Priorities, allocations, and allotments.**

In accordance with the requirements of § 18-1.307-2, insert the clause set forth therein.

**§ 18-7.403-8 Soviet-controlled areas.**

In accordance with the requirements of § 18-6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18-6.401-2.

**§ 18-7.403-9 Negotiated overhead rates.**

In accordance with the requirements of § 18-7.204-16, insert the clause set forth therein.



## RULES AND REGULATIONS

**§ 18-7.403-10 Notice to the Government of labor disputes.**

Whenever work is to be performed and a work stoppage would result in delay in an urgent NASA program, insert the clause set forth in § 18-7.104-4.

**§ 18-7.403-11 [Reserved]****§ 18-7.403-12 Limitation on withholding of payments.**

In accordance with the requirements of § 18-7.104-21, insert the clause set forth therein.

**§ 18-7.403-13 Small business subcontracting program.**

In accordance with the requirements of § 18-1.707, insert the clause set forth in § 18-1.707-3(b).

**§ 18-7.403-14 Changes to Make-or-Buy Program.**

In accordance with the requirements of § 18-3.9, insert the clause set forth in § 18-3.902(h).

**§§ 18-7.403-15 — 18-7.403-22 [Reserved]****§ 18-7.403-23 General Services Administration supply sources.**

The clause set forth in § 18-5.907 will be included in contracts in accordance with instructions contained therein.

**§§ 18-7.403-24 — 18-7.403-49 [Reserved]****§ 18-7.403-50 Data requirements.**

In accordance with the requirements of § 18-9.202, insert the clause set forth in § 18-9.202-1(e).

**§ 18-7.403-51 Approval of contract.**

The clause set forth in § 18-7.104-51 will be included in contracts which require approval by the Director, Procurement and Supply Division, NASA Headquarters.

**§ 18-7.403-52 Preference for United States-flag air and ocean services.**

Under the circumstances described in § 18-1.14, insert the clause set forth in § 18-1.1403.

**§ 18-7.403-53 Limitation of Government's obligation.**

Where funding to complete the entire contract is not available at the time it is entered into, the clause set forth in § 18-7.204-53 will be included in the contract, with an implementing Schedule provision.

**§ 18-7.403-54 Materials reports.**

In accordance with the requirements of § 18-7.303-54, insert the clause set forth therein.

**§ 18-7.403-55 NASA PERT System.**

In accordance with the requirements of § 18-7.204-55, insert the clause set forth therein.

**§ 18-7.403-56 Financial management reports.**

In accordance with the requirements of § 18-7.204-56, insert the appropriate clause set forth therein.

**§ 18-7.404 Additional clauses.**

The following clauses will be inserted in cost-reimbursement type research and development contracts providing for a fee, when it is desired to cover the subject matter thereof in such contracts.

**§ 18-7.404-1 Changes.**

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of inspection, delivery, or acceptance; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of this contract, or otherwise affects any other provision of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, (ii) in the amount of any fee to be paid to the Contractor, and (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change; *Provided however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**§ 18-7.404-2 Alterations in contract.**

The clause set forth in § 18-7.150-1 may be inserted.

**§ 18-7.404-3 [Reserved]****§ 18-7.404-4 Bill of materials.**

The clause set forth in § 18-7.105-6 may be inserted pursuant to the provisions thereof.

**§§ 18-7.404-5 — 18-7.404-49 [Reserved]****§ 18-7.404-50 Notice of delay.**

In accordance with the instructions in § 18-7.205-51, the clause set forth therein is authorized for use.

**§ 18-7.404-51 Program progress reports.**

The clause set forth in § 18-7.205-51 may be inserted.

**§ 18-7.404-52 Date of incurrence of costs.**

The clause set forth in § 18-7.205-52 may be inserted.

**§ 18-7.404-53 Contractor's independent research program.**

In accordance with the instructions in § 18-7.205-53, the clause set forth in § 18-9.101-6 may be inserted.

**§§ 18-7.404-54 — 18-7.404-56 [Reserved]****§ 18-7.404-57 Federal, State, and local taxes.**

At the discretion of the contracting officer and when requested by the contractor, the clause set forth in § 18-11.402 may be inserted in cost-reimbursement type contracts.

**§§ 18-7.405—18-7.449 [Reserved]****§ 18-7.450 Clauses for cost-reimbursement research and development contracts with nonprofit institutions (including educational institutions).****§ 18-7.450-1 Applicability.**

§§ 18-7.451, 18-7.452, and 18-7.453, including their subsections, are applicable to cost-reimbursement type research and development contracts with nonprofit institutions (including educational institutions), as defined in § 18-3.1602(c), which involve no fee or profit.

**§ 18-7.451 Required clauses.**

Except as otherwise provided in § 18-7.460, the following clauses will be inserted in all contracts specified in § 18-7.450-1.

**§ 18-7.451-1 Definitions.**

Insert the clause set forth in § 18-7.103-1. Additional definitions may be included *provided* they are not inconsistent with such clause or the provisions or these regulations.

**§ 18-7.451-2 Limitation of cost.**

Insert the clause set forth below.

**LIMITATION OF COST (SEPTEMBER 1962)**

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five per centum (75%) of the estimated cost then set forth in the Schedule, or if at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Office in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.



**§ 18-7.451-3 Allowable cost and payment.**

Insert the clause set forth below.

**ALLOWABLE COST AND PAYMENT**  
(SEPTEMBER 1962)

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) Part 3, of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract, except that if the Contractor is not an educational institution the allowable costs shall be determined in accordance with Part 2 of Section XV of said Regulation; and

(ii) The terms of this contract.

(b) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) (1) Promptly after receipt of each invoice or voucher, the Government shall, subject to the provisions of paragraph (d) below, make payment thereon as approved by the Contracting Officer.

(2) After payment of an amount equal to eighty per centum (80%) of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one per centum (1%) of such total estimated cost, or ten thousand dollars (\$10,000), whichever is less, shall have been set aside.

(d) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment therefor made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f) below), the Government shall promptly pay to the Contractor any balance of allowable cost which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each

assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release, and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier;

(C) Claims for reimbursement of costs, including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) When there is included in this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the one (1) year period after final payment.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at its expense or without cost to the Government.

**§ 18-7.451-4 Standards of work.**

Insert the clause set forth in § 18-7.302-3.

**§ 18-7.451-5 Inspection.**

Insert the clause set forth in § 18-7.302 (a). However, where a more detailed provision covering inspection is desired, as where the primary contract objective is the delivery of end items, rather than designs, drawings, or reports, the Inspection clause set forth in § 18-7.402-5 will be used.

**§ 18-7.451-6 Assignment of claims.**

In accordance with the requirements of § 18-7.103-8, insert the clause set forth therein.

**§ 18-7.451-7 Records.**

Insert the clause set forth in § 18-7.203-7. Pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things will not be required pursuant to paragraph (a) (3) of said Records clause. In the case of contracts which establish separate periods of performance, alternate subparagraph (a) (4) set forth in § 18-7.203-7(b) may be substituted for the correspond-

ing subparagraph of the clause prescribed in § 18-7.203-7(a).

**§ 18-7.451-8 Subcontracts.**

**SUBCONTRACTS (SEPTEMBER 1962)**

The Contractor shall give advance notification to the Contracting Officer of any proposed subcontract hereunder which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis, or (ii) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract.

(b) In the case of a proposed subcontract which (i) is on a cost, cost-plus-a-fee, time and material, or labor-hour basis and which would involve an estimated amount in excess of \$10,000, including any fee; or (ii) is proposed to exceed \$100,000; or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed \$100,000; the advance notification required by (a) above shall include:

(1) A description of the supplies or services to be called for by the subcontract;

(2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) The proposed subcontract price, together with the Contractor's cost or price analysis thereof, including current, complete, and correct cost or pricing data accompanied, except when the requirement is specifically waived by the Contracting Officer, by a certificate from the subcontractor to the effect that all cost or pricing data has been considered by the subcontractor in preparing his proposal and that such data is current, and has been provided the Contractor; and

(4) Identification of the type of contract proposed to be used.

(c) (1) Except as provided in subparagraph (2) below, the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which:

(i) Is on fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total estimated cost of this contract, or

(ii) Is on a cost or cost-plus-a-fixed-fee basis, or

(iii) Is on a time-material or labor-hour basis, or

(iv) Has experimental, developmental or research work as one of its purposes, or

(v) Provides for the fabrication, purchase, rental, installation, or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000.

The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(2) If this contract is with an educational institution, then provision (v) above is not applicable, but provisions (vi) and (vii) set forth below are added to the list of provisions included in subparagraph (1) and considered a part thereof.

(vi) Provides for the construction, purchase, rental, installation, or other acquisition of nonseverable industrial facilities, or

(vii) Provides for the fabrication, purchase, rental, installation or other acquisition, of any item of either (A) severable industrial facilities having a value in excess of \$1,000 or the amount, if any, specified in the Schedule or Task Order, whichever is the lesser, or (B) special tooling having a value in excess of \$1,000.

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.



## RULES AND REGULATIONS

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (ii), or, if the subcontract is for special tooling, within (iii), of (c) above, without the prior written consent of the Contracting Officer if the Contracting Officer has, in writing, approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

(h) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of the "Limitation on Payments" provisions set forth in paragraph (j) of the clause prescribed by Section 7.108 of the NASA Procurement Regulations, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above,

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price types of subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

The percentage and amount set forth in provision (i) of subparagraph (c) (1) of the foregoing clause may be varied, and in provisions (ii), (iii), and (iv) of subparagraph (c) (1), dollar amounts not in excess of \$10,000 may be established below which the prior written consent of the Contracting Officer need not be obtained. In addition to the foregoing authorized variations, in contracts with nonprofit institutions (other than educational institutions), the dollar amount set forth in provision (v) may be increased.

#### § 18-7.451-9 Utilization of small business concerns.

In accordance with the requirements of § 18-1.707-3(a), insert the clause set forth therein.

#### § 18-7.451-10 Termination for the convenience of the Government.

In accordance with the requirements of § 18-8.704-1, insert the clause set forth therein.

#### § 18-7.451-11 Disputes.

Insert the clause set forth in § 18-7.103-12.

#### § 18-7.451-12 Renegotiation.

Insert the clause set forth in § 18-7.103-13.

#### § 18-7.451-13 Buy American Act.

In accordance with the requirements of § 18-6.1, insert the clause set forth in § 18-6.104-5.

#### § 18-7.451-14 Convict labor.

In accordance with the requirements of § 18-12.2, insert the clause set forth in § 18-12.203.

#### § 18-7.451-15 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 18-12.604.

#### § 18-7.451-16 Eight-Hour Law of 1912—Overtime compensation.

Insert the clause set forth in § 18-12.303-1. Note the introductory language required by § 18-12.303-2 for inclusion in contracts with a State or political subdivision thereof.

#### § 18-7.451-17 Nondiscrimination in employment.

Insert the clause set forth in § 18-12.802.

#### § 18-7.451-18 Officials not to benefit.

Insert the clause set forth in § 18-7.103-19.

#### § 18-7.451-19 Covenant against contingent fees.

Insert the clause set forth in § 18-1.503.

#### § 18-7.451-20 Authorization and consent.

Insert the clause set forth in § 18-9.103(b).

#### § 18-7.451-21 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in § 18-9.105.

#### § 18-7.451-22 Property rights in inventions.

In accordance with the requirements of § 18-9.101-2, insert the clause set forth in § 18-9.101-2(b).

#### § 18-7.451-23 Rights in data.

In accordance with the requirements of § 18-9.203, insert the clause set forth in § 18-9.203-1.

#### § 18-7.451-24 Security requirements.

Insert the clause set forth below only in contracts without fee with educational institutions. In contracts with nonprofit institutions which are not educational institutions, insert the clause set forth in § 18-7.204-12.

#### SECURITY REQUIREMENTS (SEPTEMBER 1962)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential," or higher.

(b) NASA shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract, or thereafter indicates, security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of—

(i) The Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) Any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of NASA shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives determine that the Contractor is not complying with the security requirements of this contract the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) In the event a change in security requirements, as provided in paragraphs (b) and (c), results (i) in a change in the security classification of this contract or any element thereof from a nonclassified status to a classified status or from a lower classification to a higher classification, or (ii) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with his established policies to continue the performance of work under the contract in compliance with such change in security classification or requirements. If, despite such reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of such change in security classification or requirements he shall so notify the Contracting Officer in writing.

(f) After receiving such written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, upon the expiration of fifteen (15) days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (i) the application to this contract of such change in security classification or requirements has not been withdrawn, or (ii) a mutually satisfactory method for continuing performance of work under this contract has not been agreed



upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. Thereupon, the Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and such termination shall be deemed a termination under the provisions of the clause of this contract entitled, "Termination for the Convenience of the Government."

(h) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (h) but excluding paragraphs (e), (f), and (g) of this clause. In addition, the Contractor may insert in any subcontract, not involving fee or profit, with an educational institution, and any like lower-tier subcontract entered into thereunder may contain, in lieu of paragraphs (e), (f), and (g) of this clause, appropriate provisions extending to such subcontracts relief consistent with that provided for in those paragraphs, on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. With respect to subcontracts other than those covered by the preceding sentence, "the mutually satisfactory method" provided for in paragraph (f) above may include a provision amending this contract to provide for an equitable adjustment on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved; and the Contractor may insert in any such subcontract, and any like lower-tier subcontract entered into thereunder may contain, in lieu of paragraphs (e), (f), and (g) of this clause, appropriate provisions with respect to such equitable adjustment. Failure of the Contractor and Contracting Officer to agree to any adjustment pursuant to the preceding sentence shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(i) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the performance of a subcontract hereunder which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance which is still in effect, prior to being accorded access to such classified information.

#### § 18-7.451-25 Government property.

In accordance with the requirements of § 18-13.506, insert the appropriate clause set forth therein.

#### § 18-7.451-26 Insurance-liability to third persons.

In accordance with the requirements of § 18-7.402-26, insert either the clause set forth in § 18-7.203-22 or the appropriate clause indicated in § 18-7.402-26.

#### § 18-7.451-27 Utilization of concerns in labor surplus areas.

In accordance with the requirements of § 18-7.104-20, insert the clause set forth therein.

#### § 18-7.451-28 Payment for overtime and shift premiums.

In accordance with the requirements of § 18-12.102-3(d), insert the clause as set forth in § 18-2.102-3(h)(1).

#### § 18-7.451-29 Competition in subcontracting.

Insert the clause set forth in § 18-7.104-40.

#### §§ 18-7.451-30 — 18-7.451-49 [Reserved]

#### § 18-7.451-50 Payment of royalties.

##### PAYMENT OF ROYALTIES (SEPTEMBER 1962)

Payments by the Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of supplies, materials, or components, shall not constitute items of Allowable Cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

#### § 18-7.451-51 Estimated cost.

Normally, the clause set forth below will be used as the Schedule provision covering the estimated cost. However, the clause may be modified at the discretion of the contracting officer.

##### ESTIMATED COST (SEPTEMBER 1962)

The estimated cost of this contract is \$-----.

#### § 18-7.451-22 [Reserved]

#### § 18-7.451-53 [Reserved]

#### § 18-7.451-54 Reports of work.

See § 18-7.302-54 for guidance and a clause approved for use.

#### § 18-7.452 Clauses required to be used when applicable.

Except as otherwise provided in § 18-7.460, the following clauses will be inserted, when applicable, in all contracts specified in § 18-7.450-1.

#### § 18-7.452-1 Clauses for contracts involving construction work.

(a) In accordance with the requirements of § 18-12.4, insert in cost-reimbursement type research and development contracts with educational or nonprofit institutions, where construction work is involved, the clauses listed below which are set forth in § 18-12.403-1:

Davis-Bacon Act.  
Eight-Hour Laws—Overtime Compensation.  
Apprentices.  
Payroll Records and Payrolls.  
Copeland ("Anti-Kickback") Act—Nonrebate of Wages.  
Withholding of Funds to Assure Wage Payment.  
Subcontracts—Termination.

(b) In accordance with the requirements of § 18-6.207, insert in all contracts for construction, except those executed on Standard Form 19 and NASA Form 177W, the clause entitled "Buy American," as set forth in § 18-6.207(c).

#### § 18-7.452-2 Filing of patent applications.

In accordance with the requirements of § 18-9.107, insert the clause set forth therein.

#### §§ 18-7.452-3 — 18-7.452-6 [Reserved]

#### § 18-7.452-7 Priorities, allocations and allotments.

In accordance with the requirements of § 18-1.307-2, insert the clause set forth therein.

#### § 18-7.452-8 Soviet-controlled areas.

In accordance with the requirements of § 18-6.403, insert the clause set forth therein and include in the Schedule of the contract the list of Soviet-controlled areas set forth in § 18-6.401-2.

#### § 18-7.452-9 Negotiated overhead rates.

Where negotiated overhead rates are to be used, insert the clause set forth below in accordance with the provisions of 32 CFR Part 3, Subpart G:

##### NEGOTIATED OVERHEAD RATES (SEPTEMBER 1962)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than six (6) months after the expiration of each period specified in the Schedule shall submit to the Contracting Officer or his authorized representative, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Section XV, Part 3 of the Armed Services Procurement Regulation, as in effect on the date of this contract, except that if the Contractor is not an educational institution, the determination shall be in accordance with Section XV, Part 2 thereof.

(d) The results of each negotiation shall be set forth in an amendment to this contract, which shall specify (i) the agreed final rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the Schedule or at billing rates acceptable to the Contracting Officer or his authorized representative, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, the provisional or billing rates may, at the request of either party, be revised by mutual agreement, either retroactively or prospectively. Any such revision of negotiated provisional rates provided in the Schedule shall be set forth in an amendment to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the clause of this contract entitled "Disputes."

#### § 18-7.452-10 Notice to the Government of labor disputes.

Whenever work is to be performed and a work stoppage would result in delay in an urgent NASA program, insert the clause set forth in § 18-7.104-4.

#### § 18-7.452-11 [Reserved]



## RULES AND REGULATIONS

**§ 18-7.452-12 Limitation on withholding of payments.**

In accordance with the requirements of § 18-7.104-21, insert the clause set forth therein.

**§ 18-7.452-13 Small business subcontracting program.**

In accordance with the requirements of § 18-1.707, insert the clause set forth in § 18-1.707-3(b).

**§ 18-7.452-14 Changes to Make-or-Buy Program.**

In accordance with the requirements of § 18-3.9, insert the clause set forth in § 18-3.902(i).

**§§ 18-7.452-15—18-7.452-22 [Reserved]****§ 18-7.452-23 General Services Administration supply sources.**

In accordance with the requirements of § 18-5.907, the clause set forth therein will be included in the contract.

**§§ 18-7.452-24—18-7.452-49 [Reserved]****§ 18-7.452-50 Data requirements.**

In accordance with the requirements of § 18-9.2, insert the clause set forth in § 18-9.202-1(e).

**§ 18-7.452-51 Approval of contract.**

The clause set forth in § 18-7.104-51 will be included when approval of the contract by the Director, Procurement and Supply Division, NASA Headquarters, is required.

**§ 18-7.452-52 Preference for United States-flag air and ocean services.**

Under the circumstances described in § 18-1.14, insert the clause set forth in § 18-1.1403.

**§ 18-7.452-53 Limitation of Government's obligation.**

Where funding to complete the entire contract is not available at the time it is entered into, the clause set forth in § 18-7.204-53 will be included in the contract, with an implementing Schedule provision.

**§ 18-7.452-54 Materials reports.**

In accordance with the requirements of § 18-7.303-54, insert the clause set forth therein.

**§ 18-7.452-55 NASA PERT System.**

In accordance with the requirements of § 18-7.204-55, insert the clause set forth therein.

**§ 18-7.452-56 NASA financial management reporting.**

In accordance with the requirements of § 18-7.204-56, insert the appropriate clause set forth therein.

**§ 18-7.453 Additional clauses.**

Except as otherwise provided in § 18-7.460, the following clauses will be inserted in all contracts prescribed in § 18-7.450-1 if it is desired to cover the subject matter thereof in such contracts.

**§ 18-7.453-1 Changes.**

CHANGES (SEPTEMBER 1962)

The Contracting Officer may at any time, by a written order and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of inspection, delivery or acceptance; and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of this contract, or otherwise affects any other provision of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the estimated cost or delivery schedule, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within sixty (60) days from the date of receipt by the Contractor of the notification of change: *Provided, however*, That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**§ 18-7.453-2 Alterations in contract.**

The clause set forth in § 18-7.105-1 may be inserted.

**§ 18-7.453-3 [Reserved]****§ 18-7.453-4 Bill of materials.**

The clause set forth in § 18-7.105-6 may be inserted pursuant to the provisions thereof.

**§§ 18-7.453-5—18-7.453-49 [Reserved]****§ 18-7.453-50 Notice of delay.**

The clause set forth in § 18-7.205-50 is authorized for use when it is desirable to provide for notice by the contractor to the Government of anticipated delays in performance.

**§ 18-7.453-51 Program progress reports.**

The clause set forth in § 18-7.205-51 may be inserted.

**§ 18-7.453-52 Date of incurrence of costs.**

The clause set forth in § 18-7.205-52 is authorized for use where specific coverages of anticipating costs is considered desirable.

**§ 18-7.453-53 Contractor's independent research program.**

In accordance with the instructions in § 18-7.205-53, the clause set forth in § 18-9.101-6 may be inserted.

**§§ 18-7.453-54—18-7.453-56 [Reserved]****§ 18-7.453-57 Federal, State, and local taxes.**

The clause set forth in § 18-11.402 is authorized for use at the discretion of the contracting officer and when requested by the contractor.

**§ 18-7.453-58 Excusable delays.**

The clause set forth in § 18-8.708 may be inserted in the contract.

**§§ 18-7.454—18-7.459 [Reserved]****§ 18-7.460 Short form clauses for cost-reimbursement research contracts with nonprofit institutions (including educational institutions).**

Notwithstanding the provision of §§ 18-7.402, 18-7.403, 18-7.451, and 18-7.452, the clauses set forth or referred to in this § 18-7.460 will be used in contracts for basic or applied scientific research at nonprofit institutions of higher education or at nonprofit institutions whose primary purpose is the conduct of scientific research when a short form contract is desired. See § 18-3.1602(c) for the definition of nonprofit institution.

**§ 18-7.460-1 Definitions.**

Insert the clause set forth in § 18-7.103-1.

**§ 18-7.460-2 Limitation of cost-allowable cost and payment.**

Insert the following clause.

**LIMITATION OF COST—ALLOWABLE COST AND PAYMENT (SEPTEMBER 1962)**

(a) It is estimated that the total cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five (75%) per centum of the total estimated cost of this contract, including any amendments hereto, or if at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) The Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract or to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall specify the new revised estimated cost. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase.

(c) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) Part 3 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract, except that if the Contractor is not an educational institution the allowable costs shall be determined in accordance with Part 2 of Section XV of said Regulation; and



## (ii) The terms of this contract.

(d) Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost. Promptly after receipt of each invoice or voucher, the Government shall, subject to the provisions of paragraph (e) below, make payment thereon as approved by the Contracting Officer.

(e) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(f) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the below-listed provisions), the Government shall promptly pay to the Contractor any balance of allowable costs otherwise not paid to the Contractor.

(g) Prior to final payment under this contract, the Contractor shall deliver:

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions—

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release, and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier;

(C) Claims for reimbursement of costs, including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and

(D) When there is included in the Schedule of this contract a clause entitled "Data Requirements," claims pursuant to such clause when a written request by the Contracting Officer to furnish data is made within the one (1) year period after final payment.

**§ 18-7.460-3 Government property.**

Insert the appropriate clause set forth in § 18-13.506.

**§ 18-7.460-4 Subcontracts.**

Insert the clause set forth in § 18-7.451-8. See instructions following the clause for authorized changes:

**§ 18-7.460-5 Insurance-liability to third persons.**

In accordance with the requirements of § 18-7.402-26, insert either the clause set forth in § 18-7.203-22 or the appropriate clause indicated in § 18-7.402-26.

**§ 18-7.460-6 Records.**

Insert the clause set forth in § 18-7.203-7. Pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things will not be required pursuant to paragraph (a)(3) of said "Records" clause. In the case of contracts which establish separate periods of performance, alternate subparagraph (a)(4), set forth in § 18-7.203-7(b), may be substituted for the corresponding subparagraph of the clause prescribed in § 18-7.203-7(a).

**§ 18-7.460-7 Release of information.**

Insert the clause set forth in § 18-7.350-5.

**§ 18-7.460-8 Property rights in inventions.**

Insert the clause set forth in § 18-9.101-2(d).

**§ 18-7.460-9 Data and inspection.****DATA AND INSPECTION (SEPTEMBER 1962)**

The Government may publish, reproduce, and use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information, and other scientific data resulting from this contract. The Government has the right, at all reasonable times, to inspect or otherwise evaluate the work being performed under this contract.

**§ 18-7.460-10 Authorization and consent.**

Insert the clause set forth in § 18-9.103(b).

**§ 18-7.460-11 Notice and assistance regarding patent and copyright information.**

Insert the clause set forth in § 18-9.105.

**§ 18-7.460-12 Security.**

Insert the clause set forth in § 18-7.350-6.

**§ 18-7.460-13 Disputes.**

Insert the clause set forth in § 18-7.103-12.

**§ 18-7.460-14 Termination.**

Insert the clause set forth in § 18-8.705-50(b).

**§ 18-7.460-15 Buy American Act.**

Insert the clause set forth in § 18-6.104-5.

**§ 18-7.460-16 Nondiscrimination in employment.**

Insert the clause set forth in § 18-12.802.

**§ 18-7.460-17 Covenant against contingent fees.**

Insert the clause set forth in § 18-1.503.

**§ 18-7.460-18 Officials not to benefit.**

Insert the clause set forth in § 18-7.103-19.

**§ 18-7.460-19 Convict labor.**

Insert the clause set forth in § 18-12.203.

**§ 18-7.461 Additional clauses.**

When circumstances justify it the clauses prescribed in §§ 18-7.402, 18-7.403, 18-7.404, 18-7.451, 18-7.452, and 18-7.453 may be added to or substituted for the clauses set forth in §§ 18-7.460-1 through 18-7.460-19; however, care should be exercised to ensure that there are no inconsistencies.

2. Part 18-9 is revised to read as follows:

| Sec.           | Scope of part.                                                                      |
|----------------|-------------------------------------------------------------------------------------|
| 18-9.000       | Subpart 18-9.1—Patents                                                              |
| 18-9.100       | Scope of subpart.                                                                   |
| 18-9.101       | Property rights in inventions made in the performance of work under NASA contracts. |
| 18-9.101-1     | General.                                                                            |
| 18-9.101-2     | Use of "reporting of new technology" and "property rights in inventions" clauses.   |
| 18-9.101-3     | [Reserved]                                                                          |
| 18-9.101-4     | [Reserved]                                                                          |
| 18-9.101-5     | [Reserved]                                                                          |
| 18-9.101-6     | Patent rights under product improvement programs or independent research programs.  |
| 18-9.102       | Follow-up of property rights in inventions.                                         |
| 18-9.103       | Authorization and consent.                                                          |
| 18-9.104       | Patent indemnification of government by contractor.                                 |
| 18-9.105       | Notice and assistance.                                                              |
| 18-9.106       | Processing of infringement claims.                                                  |
| 18-9.107       | Classified contracts.                                                               |
| 18-9.108       | Payment of royalties.                                                               |
| 18-9.109-9.149 | [Reserved]                                                                          |
| 18-9.150       | Designation of "Patent Representative".                                             |
| 18-9.151       | Contract review.                                                                    |
| 18-9.152       | Contract clearance.                                                                 |
| 18-9.153       | Appendix A.                                                                         |
| 18-9.154       | Appendix B.                                                                         |

**Subpart 18-9.2—Data and Copyrights**

|                        |                                                                                              |
|------------------------|----------------------------------------------------------------------------------------------|
| 18-9.200               | Scope of subpart.                                                                            |
| 18-9.201               | Definitions.                                                                                 |
| 18-9.202               | Acquisition and use of data.                                                                 |
| 18-9.202-1             | Acquisition of data.                                                                         |
| 18-9.202-2             | Use of data.                                                                                 |
| 18-9.202-3-18-9.202-5  | [Reserved]                                                                                   |
| 18-9.202-6             | Date furnished on a restricted basis in support of a proposal.                               |
| 18-9.203               | Rights in data clauses.                                                                      |
| 18-9.203-1             | Rights in data clause for use in contracts for experimental, developmental or research work. |
| 18-9.203-2             | Rights in data clause for use in supply contract.                                            |
| 18-9.203-3             | Limited rights in data provision for use in supply contracts.                                |
| 18-9.204               | Contract clauses—Special.                                                                    |
| 18-9.204-1             | [Reserved]                                                                                   |
| 18-9.204-2             | Production of motion pictures.                                                               |
| 18-9.204-3             | Histories and other works.                                                                   |
| 18-9.204-4-18-9.204.49 | [Reserved]                                                                                   |



Sec.

- 18-9.204-50 Short form clause, fixed price, research contract with non-profit institutions (including educational institutions).
- 18-9.204-51 Short form clause, cost-reimbursement, research contract with nonprofit institutions (including educational institutions).
- 18-9.205 Contracts for acquisition of existing works.
- 18-9.205-1 Off-the-shelf purchase of books and similar items.
- 18-9.205-2 Contracts for existing motion pictures.
- 18-9.206 Contracts to be performed outside the United States.

AUTHORITY: §§ 18-9.000 to 18-9.206 issued under 42 U.S.C. 2473(b) (1).

### § 18-9.000 Scope of part.

This part sets forth policies and procedures pertaining to patents, data, and copyrights in connection with the procurement of supplies and services.

### Subpart 18-9.1—Patents

#### § 18-9.100 Scope of subpart.

(a) This subpart prescribes instructions which define and implement the policy of NASA with respect to:

- (1) Inventions made in the performance of work under contract with NASA;
- (2) Patent infringement liability of the United States resulting from work performed under contract with NASA;
- (3) Security requirements covering patent applications containing classified subject matter; and
- (4) Patent royalties payable in connection with the performance of contracts with NASA.

(b) The policies and instructions prescribed in this subpart are applicable to contracts which are to be performed within the United States, its possessions, and Puerto Rico. The Office of the General Counsel, NASA Headquarters should be consulted for policies, instructions, and contract clauses to be used in contracts which are to be performed outside the United States, its possessions, and Puerto Rico, concerning patents, data, and copyrights.

#### § 18-9.101 Property rights in inventions made in the performance of work under NASA Contracts.

##### § 18-9.101-1 General.

Except for any invention made in the performance of any work under any contract with NASA of the type described in § 18-9.101-2, it is the policy of NASA:

(a) To pay reasonable compensation for the acquisition of rights in any invention covered by a valid patent issuing thereon and enforceable against the Government. Such rights in "background" patents will not be acquired in contracts for supplies and services except by specific negotiation for such rights, unless the patents and the rights thereunder are listed and priced as a separate contract item. Questions of validity, enforceability and infringement of patents will be determined by the Office of the General Counsel, NASA Headquarters.

(b) To refer to the Inventions and Contributions Board for consideration for an award each invention made by an

employee of a NASA contractor or subcontractor to which NASA has acquired title and with respect to which an application for patent by NASA has been authorized.

The Administrator, upon his own initiative, may make monetary award on any such invention in such amount and upon such terms as he shall determine to be warranted.

#### § 18-9.101-2 Use of "reporting of new technology" and "property rights in inventions" clauses.

(a) The "Reporting of New Technology" clause set forth in subparagraph (1) below, and the "Property Rights in Inventions" clause set forth in subparagraph (2) below will be included in every NASA contract or modification thereof (made by or on behalf of NASA) which involves research, experimental, design, engineering or developmental work, except contracts for basic or applied scientific research at nonprofit institutions of higher education or nonprofit institutions whose primary purpose is the conduct of research, in which the "Property Rights in Inventions" clause set forth in subparagraph (3) below is applicable.

##### (1) Reporting of New Technology Clause.

REPORTING OF NEW TECHNOLOGY (NOVEMBER 1962)

(a) As used in this clause and in the Property Rights in Inventions clause of this contract, the following terms have the meanings assigned:

(i) "Reportable item" means any invention, discovery, improvement or innovation, whether or not the same is susceptible of protection under the United States patent laws, which is made in the performance of work under this contract or in the performance of any work done upon an understanding in writing that this contract would be awarded;

(ii) "Made" means conceived or first actually reduced to practice, and "making" means conceiving or first actually reducing to practice;

(iii) "Invention" means any reportable item which appears to fall within a statutory class of patentable subject matter (35 U.S.C. 101 and 171) and which has a reasonable possibility of being patentable;

(iv) "Subcontract" and "subcontractor" means any subcontractor or subcontractor of the Contractor, and includes any lower-tier subcontract or subcontractor under this contract;

(v) When this clause and the Property Rights in Inventions clause are included in any subcontract, "Contractor" shall be read as "subcontractor" and "contract" shall be read as "subcontract";

(vi) "Person" means any individual, partnership, group, corporation, association, institution or other entity; and

(vii) "Administrator" includes the Administrator of NASA and his duly authorized representative.

(b) Contractor shall conduct a continual review of the results of the work performed under this contract for the purpose of identifying reportable items and shall furnish promptly to the Contracting Officer a written report concerning each reportable item. Such report shall include:

(i) Such technical detail as is necessary to identify, describe and convey an understanding of the nature, purpose, operation and physical (electrical, chemical, etc.) characteristics of each reportable item;

(ii) A designation of each reportable item considered by the Contractor to constitute an invention;

(iii) A statement which sets forth the relationship of each reportable item to the present contract work; and

(iv) A statement of all apparent uses in which each reportable item may find application.

(c) In addition to the report required in (b) above, the Contractor shall furnish to the Contracting Officer within one month following each semi-annual anniversary date of this contract a summary of the review activities undertaken and the results thereof which shall include:

(i) A written report as required by (b) above for each reportable item not previously reported;

(ii) A statement listing each subcontract containing this Reporting of New Technology clause and the Property Rights in Inventions clause, stating the name and address of each subcontractor describing the work to be performed, and giving the estimated completion date of each subcontract.

(d) After completion of the contract work and prior to final payment, Contractor shall furnish a report:

(i) Listing all reportable items or certifying that there were no reportable items; and

(ii) Confirming or correcting previous information submitted regarding subcontracts, on certifying that no such subcontracts were awarded.

(e) (1) In each subcontract hereunder involving research, experimental, design, engineering or development work, Contractor shall include the Property Rights in Inventions clause of this contract and this clause except for paragraph (f) below.

(2) In each subcontract hereunder of over \$50,000 which calls for work of the type described in (e) (1), the Contractor shall, prior to tendering final payment:

(i) Obtain from an official having authority to execute such subcontract on behalf of the subcontractor, a letter certifying compliance by the subcontractor with this clause and the Property Rights in Inventions clause of this contract; and

(ii) Submit a copy of such letter to the Contracting Officer.

(3) In the event of refusal by a subcontractor to accept this clause and the Property Rights in Inventions clause or either of them, Contractor shall promptly notify the Contracting Officer of such refusal and shall not execute the subcontract in question until provisions have been approved in writing by the Contracting Officer for inclusion in said subcontract.

(f) (1) Except as provided in subparagraph (2) below, if the Contractor fails to comply with the provisions of this clause or of the Property Rights in Inventions clause of this contract, there shall be withheld from payment, until such failures have been corrected, either ten percent (10%) of the amount of this contract, or fifty thousand dollars (\$50,000), whichever is less. After payment of eighty-five percent (85%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of such amount, or fifty thousand dollars (\$50,000), whichever is less, shall have been set aside, such reserve or balance to be retained until the Contractor shall have complied with the provisions of this clause and the Property Rights in Inventions clause as aforesaid. In the event that Contractor does not comply with the provisions aforesaid within one year after final payment (exclusive of the amount withheld) of this contract, any amount actually withheld under the provisions of this contract and authorized to be withheld under this paragraph (f) shall be deemed to be liquidated damages for noncompliance with this clause. No amount



shall be withheld under this paragraph (f) so long as the amount specified in this paragraph (f) is being withheld under other provisions of this contract. The payment of any amount or withholding thereof under this paragraph (f) shall not be construed as a waiver of any rights accruing to the Government under this contract.

(2) Subparagraph (1) does not apply when the contract is a no fee contract with an educational institution. In no fee contracts with nonprofit institutions other than an educational institution, the percentage amount specified to be withheld in subparagraph (1) above is reduced from ten percent (10%) to one percent (1%).

(g) The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all reports required by paragraphs (b) and (c) of this clause.

## (2) Property Rights in Inventions Clause.

### PROPERTY RIGHTS IN INVENTIONS (NOVEMBER 1962)

(a)(1) An invention reported under the Reporting of New Technology clause of this contract shall be presumed to have been made by a person described in paragraphs (1) or (2) of Section 305(a) of the National Aeronautics and Space Act of 1958 (hereinafter called "the Act"), and under the conditions therein described.

(2) With respect to those inventions designated as such by the Contractor at the time of reporting, the presumption of (a)(1) above shall be conclusive unless the Contractor at the time of reporting any such invention does one of the following:

(i) Submits to the Contracting Officer a written statement, containing supporting details, demonstrating that the invention had not been made under the circumstances set forth in either paragraphs (1) or (2) of Section 305(a) of the Act; or

(ii) Notifies the Contracting Officer of the Contractor's intention to file a petition for waiver of the rights of the United States to such invention, and files such petition within three months of such notification.

(3) With respect to other inventions, the presumption of (a)(1) above shall be conclusive if the Contractor fails to take one of the actions set forth in (a)(2) above within 30 days after notification by the Administrator that the reportable item has been determined to constitute an invention.

(b)(1) If the Contractor files a petition for waiver, he may nevertheless file the statement described in (a)(2) above. With or without a petition for waiver, the Administrator will review the information furnished by the Contractor in such statement and any other available information relating to the circumstances surrounding the making of the invention and will notify the Contractor of the decision as to whether the invention had been made under the circumstances set forth in either paragraphs (1) or (2) of Section 305(a) of the Act.

(2) If the Contractor notifies the Contracting Officer of his intention to petition for waiver as provided in (a)(2) above, but either (i) fails to file his petition within the time specified therein, or (ii) at the time of filing a petition for waiver, does not file an accompanying written statement in accordance with (a)(2) above, the presumption stated in (a)(1) above shall become conclusive.

(c) With respect to each invention which becomes the exclusive property of the United States, Contractor shall:

(i) Notify the Contracting Officer promptly following any public use or sale by the Contractor of the invention or any publication by the contractor describing such invention; and

(ii) Furnish, upon written request by the Contracting Officer, such full and complete technical and other information available to the Contractor as will be adequate for ready transposition to patent specification form and for effective prosecution of a patent application, and, in addition, shall execute or secure execution of documents and instruments as may be determined by the Administrator to be necessary for the preparation and prosecution of applications for Letters Patent covering each invention.

## (3) Property Rights in Inventions Clause.

### PROPERTY RIGHTS IN INVENTIONS CLAUSE (NOVEMBER 1962)

This contract and all subcontracts hereunder are subject to Section 305 of the National Aeronautics and Space Act of 1958 relating to property rights in inventions. The term "invention" includes any invention, discovery, improvement, or innovation. Any invention made in performance of work under this contract shall be presumed to have been made under the conditions described in paragraphs (1) or (2) of Section 305(a) of the Act. The Contractor shall furnish to the Contracting Officer a written report containing full and complete technical information concerning any invention made in the performance of any work under this contract promptly upon the making of such invention and shall require all subcontractors to do so. Upon written request of the Contracting Officer, Contractor shall furnish additional information available to him, and shall secure the execution of such documents as may be necessary to enable the Administrator, NASA to file and prosecute patent applications on any such invention. Prior to completion of this contract, the Contractor shall furnish to NASA a report as to whether or not any inventions of the type referred to herein have been made in the performance of work under this contract.

### § 18-9.101-3 [Reserved]

### § 18-9.101-4 [Reserved]

### § 18-9.101-5 [Reserved]

### § 18-9.101-6 Patent rights under product improvement programs or independent research programs.

Where NASA under its established procedures provides, as an item in the computation of overhead, financial support to (a) a contractor's product improvement program, or (b) a contractor's independent research program, the inventions resulting from such programs are not subject to the "Property Rights in Inventions" clause merely by virtue of the provision of such financial support. The clause set forth below may be included in the Schedule of a contract wherein NASA is providing such support to the contractor's product improvement program or independent research program.

#### CONTRACTOR'S INDEPENDENT RESEARCH PROGRAMS (SEPTEMBER 1962)

Any invention made in the performance of any work by the Contractor under the Contractor's own product improvement program or the Contractor's independent research program, even though supported by an allowance of costs for such program as a part of the overhead costs hereof, will not be subject to the "Property Rights in Inventions" clause of this contract unless said work is identified in writing as being required in the performance of this contract.

### § 18-9.102 Follow-up of property rights in inventions.

Appropriate systems of follow-up in connection with the administration of contracts of NASA containing a "Property Rights in Inventions" clause will be maintained by the Office of the General Counsel, NASA Headquarters, in order that:

(a) Inventions in which the Government may have an interest may be properly identified;

(b) Suitable and necessary steps may be taken to protect the Government's interest in such inventions; and

(c) Formal agreements may be obtained evidencing the Government's interest.

### § 18-9.103 Authorization and consent.

(a) Under 28 U.S.C. 1498, any suit for infringement of a patent based on the manufacturer or use of a patented invention for the Government by a contractor or by a subcontractor (including lower tier subcontractors) can be maintained only against the Government in the Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, in order that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent will be given as herein provided. The "Authorization and Consent" clause set forth below will be included in any contract for supplies (including construction work), and construction contracts, as follows:

#### AUTHORIZATION AND CONSENT (SEPTEMBER 1962)

The Government hereby gives its authorization and consent (without prejudice to its rights of indemnification, if such rights are provided for in this contract) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The Contractor's entire liability to the Government for infringement of a patent of the United States, shall be determined solely by the provisions of the indemnity clause, if any, included in the contract and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) Since greater latitude in the use of patented inventions is to be allowed in a contract for experimental, developmental, or research work than in a contract for supplies, the "Authorization and Consent" clause set forth below will be used in contracts calling for experimental, developmental, or research work.



#### AUTHORIZATION AND CONSENT (SEPTEMBER 1962)

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower tier subcontract).

#### § 18-9.104 Patent indemnification of Government by contractor.

(a) NASA's mission is directed to:

(1) Research into the solution of problems of flight within and outside the atmosphere;

(2) The development, construction, testing, and operation for research purposes of aeronautical and space vehicles; and

(3) Such other activities as may be required for the exploration of space.

A patent indemnity clause is not appropriate in contracts for experimental, developmental, or research work.

(b) When it is known that an item being procured is protected by a United States patent or patents, the inclusion of a "Patent Indemnity" clause may be appropriate. In such case, where the patent owner informs a prospective bidder or otherwise contends that the item being procured would infringe his patent or patents, the patent indemnity clause set forth below, limited to the specifically designated patents in question, may be included in the contract if its use is approved by patent counsel.

#### PATENT INDEMNITY (SEPTEMBER 1962)

If the amount of this contract is in excess of five thousand dollars (\$5,000), the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs for infringement of United States letters patent

(Here designated the specific patent or patents).

The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply if: (i) the infringement results from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor; or (ii) the infringement results from the addition to, or change in, the supplies furnished or construction work performed, which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) the claimed infringement is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

#### § 18-9.105 Notice and assistance.

The Government should be notified by the Contractor of all claims of infringement in connection with the performance of a contract which comes to the contractor's attention, especially where the Government has given its authorization and consent for the use and manufacture of any patented invention

in the performance of the contract or where the contract calls for the delivery to the Government of supplies, model, or prototypes. The contractor should also assist the Government, to the extent of evidence and information in the possession of the contractor, in connection with any suit against the Government, or any claim against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the performance of the contract. Accordingly, the "Notice of Assistance Regarding Patent and Copyright Infringement" clause set forth below will be included in contracts in excess of \$10,000.

#### NOTICE OF ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (SEPTEMBER 1962)

The provisions of this clause shall be applicable only if the amount of this contract exceeds ten thousand dollars (\$10,000).

(a) The contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any suit against the Government on any claim against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, upon request, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except in those cases in which the Contractor has agreed to indemnify the Government against the claim being asserted.

#### § 18-9.106 Processing of infringement claims.

Subsection 203(b)(3) of 42 U.S.C. 2473(b)(3) authorizes the Administrator "to acquire (by purchase, lease, condemnation, or otherwise), . . . real or personal property (including patents, or any interest therein) as the Administrator deems necessary . . ." This authority is applicable to settlement of infringement claims only in the instance of a continuing or planned future infringement. However, when a claim is for past infringement only, the above cited subsection does not provide authority for the settlement of such claims. Accordingly, no claim against the Administration for past use of manufacture by or for the Government of an invention covered by a United States patent will be considered for settlement unless it is determined that the alleged infringement is continuing or that future use or manufacture of the patented invention is foreseeable. Any such claim should be addressed to the Office of General Counsel, NASA Headquarters, and should include the following information:

(a) Identifying the United States patent or application for United States patent;

(b) The interest of the claimant; and

(c) The acts alleged to constitute the unlicensed use or manufacture of the patented invention.

The claimant should also state that his claim is not based solely upon past unlicensed use or manufacture of the patented invention.

#### § 18-9.107 Classified contracts.

Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from an issuance of a patent, may be a violation of 18 U.S.C. 791 et seq. (Espionage and Censorship) and related statutes and may be contrary to the interest of national security. Accordingly, the "Filing of Patent Applications" clause set forth below will be included in every classified contract and in every unclassified contract which covers or is likely to cover classified subject matter.

#### FILING OF PATENT APPLICATIONS (SEPTEMBER 1962)

(a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S.C. 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the United States Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential", a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

#### § 18-9.108 Payment of royalties.

The Government has acquired license and other rights under a large number of inventions as the result of Government-sponsored research and development. In order that the Government may determine whether the approval as an item of allowable cost of the payment of royalties by the contractor under license agreement is consistent with the rights which the Government has acquired, these payments of royalties by the contractor are allowable only to the extent authorized by the contracting officer. Accordingly, the "Payment of Royalties" clause set forth in (a) below will be included in all NASA cost-reimbursement type contracts. This clause may be omitted from contracts with members of the Manufacturers Aircraft Association and the



clause set forth in (b) below substituted therefor.

Clause (a):

PAYMENT OF ROYALTIES (SEPTEMBER 1962)

Payment by the Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of supplies, materials, or components shall not constitute items of Allowable Cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver of any rights or defenses respecting such patents.

Clause (b):

PAYMENT OF ROYALTIES (SEPTEMBER 1962)

Payment by the Contractor of any sum for royalties or patent rights not included in the ordinary purchase price of standard commercial supplies shall not constitute items of Allowable Cost hereunder, unless and until approved by the Contracting Officer. Reimbursement to the Contractor on account of any such payments shall not be construed as an admission by the Government of the enforceability, validity or scope of, or title to any of the patents involved, nor shall any such reimbursement constitute a waiver or any rights of defenses respecting such patents, provided however, that the approval of the Contracting Officer shall not be required for the payment of royalties pursuant to the terms of licenses issued under patents awarded compensation in accordance with that agreement known as the Cross-Licensing Agreement of the Manufacturers Aircraft Association, Inc., in effect as of December 31, 1928, as supplemented by the Agreement of September 30, 1935.

§§ 18-9.109—18-9.149 [Reserved]

§ 18-9.150 Designation of "patent representative".

(a) Whenever a NASA contract contains a "Property Rights in Inventions" clause, the contracting officer shall designate a representative (hereafter called the "patent representative") to administer the patent provisions of such contract.

(b) Designation of the patent representative shall be by letter to the contractor, with a copy to the representative so designated. The notification to the contractor shall state that all correspondence and other matters relating to patent provisions of the contract should be addressed to the patent representative. A sample letter to be used for this purpose is outlined in NASA PR 9.153.

(c) Except as provided in subparagraph (d) below, the patent representative shall be either the Assistant General Counsel for Patent Matters or the staff member (by titled position) having cognizance of patent matters for the NASA field installation concerned.

(d) The staff member having cognizance of patent matters for the Western Operations Office normally will be designated as patent representative for NASA contracts placed with contractors located at or west of Denver, Colorado.

(e) The patent representative shall be furnished a copy of the contract and other pertinent material by the contract-

ing officer, and shall be notified as to the NASA organizational unit having technical cognizance of the contract.

(f) The patent representative shall maintain a complete file of correspondence and other actions involving administration of the contract patent provisions. Copies of documents which are appropriate for inclusion in the general contract files shall be furnished the contracting officer.

§ 18-9.151 Contract review.

(a) The patent representative shall review the technical progress of work performed under the contract, as necessary, to ascertain the presence of inventions. Whenever an invention is reported under the contract, the patent representative will decide as to the adequacy of such disclosure.

(b) Consultations will be held with cognizant technical personnel and others concerned, where required, to determine the relationship of inventions reported by the contractor to work performed under the contract, and the value thereof to NASA or other Government agencies. Such information is necessary for the Administrator, NASA, to decide as to the disposition of rights in inventions between the Government and the contractor.

(c) No action shall be taken by the patent representative which would involve a change or increase in the work required to be performed under the contract, or which otherwise is outside the scope of obligations imposed upon the contractor by the "Property Rights in Inventions" clause. Where it appears that a proposed action might result in a dispute with the contractor, the patent representative shall consult with the contracting officer. All correspondence involving disputes with the contractor shall be prepared for and signed by the contracting officer.

(d) Upon completion of the contract, the patent representative will determine whether the inventions reported under the contract constitute all of the inventions made. Confirmation will also be made in any case where the contractor reports no invention under the contract. Such determinations and confirmations generally will require consultation with the cognizant technical personnel.

§ 18-9.152 Contract clearance.

(a) Upon submission of a satisfactory final report of inventions by the contractor, the patent representative shall notify the contracting officer promptly by written memorandum. No final payment under the contract shall be made or approved by the contracting officer unless and until a satisfactory final report of inventions has been received.

(b) In the event final payment is being withheld solely because a satisfactory final report of inventions has not been received, an appropriate investigation shall be made by the patent representative and a letter forwarded to the contractor requesting compliance. A sample letter to be used for this purpose is outlined in § 18-9.154.

§ 18-9.153 Appendix A—Sample letter to be used for designation of Patent Representative.

Letterhead Stationery

Date \_\_\_\_\_

(Contractor's Name  
and Address)

Re: \_\_\_\_\_  
(Contractor Number)

GENTLEMEN:

You are advised that the \* [Assistant General Counsel for Patent Matters, National Aeronautics and Space Administration, Washington 25, D.C.] [the title and address of the staff member having cognizance of patent matters for the NASA field establishment concerned] has been designated to represent the contracting officer in administering the "Property Rights in Inventions" clause contained in the referenced contract. In this capacity, he is responsible for evaluating reports and disclosures of inventions under the contract and determining final compliance with the contract in respect hereto.

Future correspondence initiated by you with respect to reports and disclosures of inventions under the contract, and any associated statements, requests, or notifications, as provided in paragraphs (d) (i)-(iv) of the "Property Rights in Inventions" clause, should be directed to the above representative. Notification of compliance with paragraph (i) of the clause respecting subcontracts containing the "Property Rights in Inventions" clause should also be directed to such representative.

Attention is particularly directed to paragraph (b) of the clause relating to the contractor's obligations for prompt reporting and disclosure of inventions. This should be accomplished in a timely manner so that prompt determinations can be made as to the rights in such inventions, and necessary steps taken to protect the inventions as required by subsection 305(h) of the National Aeronautics and Space Act of 1958. Attention is also directed to paragraph (k) of the "Property Rights in Inventions" clause which provides for the withholding of certain funds from payment until the contractor has complied with the requirements pertaining to the reporting and disclosure of inventions.

In reporting and disclosing inventions, note should be made of paragraph (d) of the clause which establishes a presumption that exclusive rights to inventions under the contract belong to the Government unless the reports are accompanied by certain statements, requests or notifications.

Enclosed for your information and guidance are copies of (a) section 305 of the National Aeronautics and Space Act of 1958, (b) NASA regulations pertaining to Patent Provisions for Contracts, and (c) NASA Patent Waiver Regulations.

To be signed by the Contracting  
Officer

Enclosures.

\*Use whichever of the two bracketed provisions is appropriate.

§ 18-9.154 Appendix B—Sample letter to be used in requesting contractor's final report of inventions.

Letterhead Stationery

Date \_\_\_\_\_

(Contractor's Name  
and Address)

Re: \_\_\_\_\_  
(Contract Number)

GENTLEMEN:

It is understood that work under the referenced contract is nearing completion. Accordingly, we wish to invite your attention to paragraph (k) of the "Property Rights in



Inventions" clause which provides for the withholding of certain funds from payment until the contractor has complied with the requirements of paragraphs (b) and (c) thereof with respect to the reporting and disclosure of inventions.

If the reports required by paragraph (b) of the above clause have not been previously made, they should be presented at this time, together with the final report required by paragraph (c).

In reporting inventions, note should be made of paragraph (d) of the clause which establishes a presumption that exclusive rights to inventions under the contract belong to the Government unless the reports are accompanied by certain statements, requests, or notifications.

It is suggested that this information be furnished promptly to avoid any delay in final payment.

To be signed by the Contracting Officer

### Subpart 18-9.2—Data and Copyrights

#### § 18-9.200 Scope of subpart.

This subpart sets forth NASA policy, implementing instructions, and contract clauses with respect to acquisition and use of data and copyrights. The policy and procedures set forth in this subpart apply to all data required to be delivered to the Government under a contract whether such data originates with the contractor or a subcontractor.

#### § 18-9.201 Definitions.

For the purpose of this subpart, the following terms have the meanings set forth below:

(a) "Data" means writings, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of any similar nature whether or not copyrighted. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) "Proprietary data" means data providing information concerning the details of a contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the contractor has protected such information from unrestricted use by others.

(c) "Other data" means all data other than "proprietary data" and includes:

(1) Operational data which provides information suitable among other things for instruction, operation, maintenance, evaluation or testing; and

(2) Descriptive data which provides descriptive or design drawings or descriptive material in the nature of design specifications which, although not including any "proprietary data," may nevertheless be adequate to permit manufacture by other competent firms.

(d) "Standard commercial items" means supplies or services which normally are or have been sold or offered to the public commercially by any supplier.

#### § 18-9.202 Acquisition and use of data.

#### § 18-9.202-1 Acquisition of data.

(a) *General.* NASA generally subscribes to and follows the policy and procedures with respect to the acquisition of data set forth in 32 CFR 9-202.1. However, NASA's needs for data are different from those of the Department of Defense since NASA is concerned principally with research and development. In a research and development program the needs for data may not always be determinable at the time of contracting. NASA has developed a general clause designed to preserve a contractual right to call for such data as is retained in the normal course of business at any time up to one year after final payment under the contract. The "Data Requirements" clause set forth in (e) below has been developed to serve this need of NASA, and the instructions for its use are set forth in (d) below. Discussion of known requirements for data, in general, is set forth in (b) below and the requirements for data in supply contracts are treated in (c) below.

(b) *Known requirements for data.* Use of a "Rights in Data" clause does not obtain for the Government the delivery of any data whatsoever, but only rights to use that data which is specified elsewhere in the contract to be delivered. When the requirements for data are known in advance of making the contract and delivery of data is definitely to be required in the performance of the contract, the requirements for data must be specified in the Schedule of the contract. These data requirements should be made known to the contracting officer prior to the preparation of invitations for bids in the case of formally advertised procurements or prior to the preparation of requests for proposals in the case of contracts to be awarded by negotiation. Also in the case of contracts to be awarded by negotiation, the requirements for data should be discussed as a part of the negotiation proceedings.

(c) *Requirements for data in supply contracts.* "Proprietary data" will not be requested by the Government in formally advertised procurements and procurements for standard commercial items. The requirements for data in a supply contract should be known in advance of making the contract and should be specifically set forth in the purchase request. If the negotiator feels that the data requirements furnished him are inadequate to obtain all the data which the Government should have, he should obtain further guidance from the cognizant technical office. If further data is then believed to be necessary, the services of legal counsel should be requested in drafting a suitable Schedule provision requiring the furnishing of such data, using the "Data Requirements" clause set forth in (e) below as a guide, where appropriate.

(d) *Requirements for data in contracts for experimental, developmental or research work.* (1) If the contract calls for the development and delivery of hardware, or for the development of a practical process, the clause set forth in (e) below will be included in the con-

tract. Subparagraphs (a)(2)(ii) and (iii) of the clause may be deleted or modified in accordance with NASA's requirements as indicated by the project engineer. Also, upon request of the contractor, provision (2) of paragraph (c) may be deleted, in which case the identification "(1)" for provision (1) should also be deleted.

(2) In addition to the "Data Requirements" clause of (e) below, the Schedule of the contract may contain such specific provisions for the furnishing of data as may have been requested by the cognizant technical office or the contracting officer. If the contract does not call for the development and delivery of hardware, or for the development of a practical process, the instructions as to what data the contractor is to be required to furnish should ordinarily be set forth in the work statement or be included in a Schedule provision calling for reports. In any event, the contractor will be required to furnish to the Government for the price of the work all data resulting directly from performance of the contract, whether or not it would otherwise be "proprietary data." The "Data Requirements" clause set forth in (e) below is not appropriate for use in research or study contracts unless hardware is to be furnished or a practical process is to be developed in the performance of the contract. However, nothing herein will preclude the use of a data requirements clause in such contracts, but if such a clause is to be used, the assistance of legal counsel will be obtained in drafting the clause.

#### (e) Data Requirements Clause

##### DATA REQUIREMENTS (JULY 1962)

(a) To the extent that the following data is not elsewhere required to be furnished to the Government under this contract, and is of the type retained by Contractor in the normal course of business, the Contractor, upon written request of the Contracting Officer at any time during contract performance or within one year after final payment, shall furnish the following:

(1) A set of engineering drawings necessary to enable reproduction or, where appropriate, manufacture of any equipment or items furnished under the contract (other than components or items of standard commercial design or items fabricated heretofore); or a set of flow sheets and engineering drawings necessary to enable performance of any process developed under the contract. Such set or sets of drawings and flow sheets shall be reproducible copies incorporating all changes made in the equipment or process in the form in which it was delivered to the Government.

(2) Any of the following data which is necessary to explain or help Government technical personnel understand any equipment, items or process developed under the contract and furnished to the Government:

(i) A copy (which shall be a reproducible master if one is so requested) of drawings and other technical data used in or prepared in connection with the development, practice and testing of any process or processes required under the contract, or with the development, fabrication, and testing of prototype models of equipment or items (other than items of standard commercial design or items fabricated heretofore), if required under the contract.

(ii) A report of all studies made in planning the work, and in developing back-



ground research for the work, including citation references to all such background research, and a copy of all compilations, digests or analyses of such background research compiled in connection with the performance of this contract.

(iii) A copy (which shall be a reproducible master if one is so requested) of design studies, research notes, parameter and tolerance studies, drawings, including Contractor's identification of symbols and markings, specifications, test results and any other technical information used in any research, development, design, engineering, and testing required in the performance of this contract, including test equipment and related items, together with any information as to safety precautions which may be necessary in connection with the manufacture, storage, or use of the equipment, material, or process, if any, in the event that an equipment, material or process is the subject of research under this contract.

The Contractor shall not be required to furnish any background data which may be described in (ii) or (iii) above unless such data is essential and closely related to the contract work.

(b) All reports, data, and recorded information which are required to be furnished by the Contractor under this provision, as well as all other reports of a technical nature required to be furnished under this contract, are "Subject Data" within the meaning of the clause of the General Provisions of this contract entitled "Rights in Data."

(c) Nothing contained in this "Data Requirements" clause shall require the Contractor to deliver (1) any data, the delivery of which is excused by paragraph (i) of the clause of the General Provisions of this contract entitled "Rights in Data"; or (2) data previously developed by parties other than the Contractor, independently of this contract and acquired by Contractor prior to this contract under conditions restricting Contractor's right to disclose the same. If any of the data requested is in the public domain or copyrighted, it will be sufficient for the Contractor to identify the data and furnish a citation as to where it may be found.

(d) Any reproducible copies requested under this "Data Requirements" article shall be of a type and prepared in accordance with good commercial practice.

(e) In the event the Contracting Officer requests the delivery of data by the Contractor, as contemplated by (a) above, prior to final payment, such request shall be treated as a change under the clause of this contract entitled "Changes and an equitable adjustment in the price, if this is a fixed price contract, or estimated cost and any fixed fee, if this is a cost-type contract, shall be made to cover the cost of preparing drawings called for in (a)(1) above, and of collecting, preparing, editing, duplicating, assembling, and shipping the data requested under (a) above, but only to the extent that the Contractor warrants that such costs were not included in the price (or estimated cost and fixed fee) of the contract. The Contractor shall comply with requests of the Contracting Officer made under (a) above, within one year following final payment: *Provided*, That suitable provision is made for reimbursement of the additional costs of complying with such request, together with a reasonable fee or profit thereon, such additional costs being limited to the costs set forth above, and warranted to have been excluded from the price (or estimated cost and fixed fee) of the contract. Any adjustment or payment under this paragraph (e) shall not include any amount for the value of the data, as distinguished from the costs set forth above.

#### § 18-9.202-2 Use of data.

(a) *Other data.* When data other than "proprietary data" is obtained, it will be obtained without any limitation on its use by the Government.

(b) *Proprietary Data—(1) Supply contracts.* When "proprietary data" is obtained by negotiation under a supply contract, in accordance with § 18-9.202-1, the purposes for obtaining it will govern its use. If it is obtained for the purpose of enabling the Government to establish additional sources of supply, it will be obtained without limitation as to its use; in such case the "Rights in Data" clause defined and prescribed in § 18-9.203-2 will be included in the contract and the requirement for the "proprietary data" will be specified in the contract Schedule. However, where it has been determined to be necessary to obtain "proprietary data" for some limited purpose, such as emergency manufacture by the Government, such data may be obtained subject to limitation as to its use; in such case the "Rights in Data" clause required by § 18-9.203-2 together with the paragraph (j) set forth in § 18-9.203-3 will be included in the contract, and the contract Schedule will suitably identify the data which will be subject to limited use.

(2) *Contracts for experimental, developmental, or research work.* When "proprietary data" is obtained under a contract having as one of its principal purposes experimental, developmental, or research work it will be obtained without limitation as to its use; in such case the "Rights in Data" clause set forth in § 18-9.203-1 will be included in the contract.

§ 18-9.202-3 [Reserved]

§ 18-9.202-4 [Reserved]

§ 18-9.202-5 [Reserved]

§ 18-9.202-6 Data furnished on a restricted basis in support of a proposal.

When an offeror has submitted data on a restricted basis in accordance with § 18-3.109 in response to a request for a proposal, and it is proposed to award the contract to such offeror, the contracting officer will ascertain whether it is desired to acquire rights to use all or part of the data furnished with the proposal. If it is desired to acquire such rights, the contracting officer will determine in accordance with § 18-9.201 whether such data is proprietary in nature, and will negotiate with the offeror in accordance with the policy prescribed in § 18-9.202 for the acquisition and use of such data. If the offeror agrees to furnish such data under the contract, the appropriate clause of § 18-9.203 will be inserted in the contract, and the Schedule will identify the data to be covered by such clause.

#### § 18-9.203 Rights in data clauses.

(a) If data is to be delivered under the contract, the appropriate "Rights in Data" clause set forth below will be added to the "General Provisions." However, a "Rights in Data" clause does not in itself specify the data with respect to

which the Government will obtain the rights set forth in that clause. Therefore, Schedule provisions are necessary to specify the specific data which the Government wants to have furnished. See § 18-9.202-1 for instructions concerning suitable Schedule provisions. The rights prescribed in the "Rights in Data" clause attach only to the data specified to be delivered. Except for the cases noted in (b) below, when data is to be delivered, the "Rights in Data" clause set forth in § 18-9.203-1 will be included in the contract if it involves experimental, developmental, or research work; and if the contract is for supplies the clause defined and prescribed in § 18-9.203-2, together with paragraph (j) set forth in § 18-9.203-3, if applicable, will be included in the contract.

(b) In the case of contracts for:

(1) The acquisition of existing works, § 18-9.205 is applicable;

(2) The production of motion pictures, preparation of scripts, musical composition, sound tracks, translations, adaptations and the like; or the histories and works described in § 18-9.204-3; § 18-9.204-2 is applicable;

(3) Performance outside the United States, its territories, or possessions or Puerto Rico, § 18-9.206 is applicable;

(4) Research with a nonprofit institution using NASA Form 246, § 18-9.204-4 is applicable; and

(5) Research with an educational or nonprofit institution using NASA Form 419S, § 18-9.204-5 is applicable.

#### § 18-9.203-1 Rights in data clause for use in contracts for experimental, developmental or research work.

##### RIGHTS IN DATA (JULY 1962)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings, or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) The Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all Subject Data now or hereafter covered by copyright.

(c) The Contractor shall not include in the Subject Data any copyrighted matter, without the written approval of the Contracting Officer, unless he provides the Government with the written permission of the copyright owner for the Government to use such copyrighted matter in the manner provided in paragraph (b) above.

(d) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Subject Data delivered under this contract.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.



## RULES AND REGULATIONS

(f) Unless otherwise limited below, the Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all Subject Data delivered under this contract.

(g) The Contractor recognizes that the Government, or a foreign government with funds derived through the Mutual Security Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of Subject Data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Mutual Security Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, or which is in the public domain, or with respect to which the Government has been placed in possession without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(h) Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government shall have the right at any time to modify, remove, obliterate or ignore any marking not authorized by the terms of this contract on any piece of Subject Data furnished under this contract.

(i) Data need not be furnished for standard commercial items or services which are normally or have been sold or offered to the public commercially by any supplier and which are incorporated as component parts in or to be used with the product or process being developed if in lieu thereof identification of source and characteristics (including performance specifications, when necessary) sufficient to enable the Government to procure the part or an adequate substitute, are furnished; and further, proprietary data need not be furnished for other items which were developed at private expense and previously sold or offered for sale, including minor modifications thereof, which are incorporated as component parts in or to be used with the product or process being developed, if in lieu thereof the Contractor shall identify such other items and that "proprietary data" pertaining thereto which is necessary to enable reproduction or manufacture of the item or performance of the process. For the purpose of this clause "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to its manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use by others.

#### § 18-9.203-2 Rights in data clause for use in supply contract.

In all supply contracts where data is to be delivered, paragraph (i) of the "Rights in Data" clause in § 18-9.203-1 will be omitted and the following paragraph (i) will be substituted therefor.

(i) Notwithstanding any Tables or Specifications included or incorporated in the

contract by reference, "proprietary data" need not be furnished unless suitably identified in the Schedule of the Contract as being required. For the purpose of this clause, "proprietary data" means data providing information concerning the details of a Contractor's secrets of manufacture, such as may be contained in but not limited to his manufacturing methods or processes, treatment and chemical composition of materials, plant layout and tooling, to the extent that such information is not readily disclosed by inspection or analysis of the product itself and to the extent that the Contractor has protected such information from unrestricted use of others. (July 1962).

In the negotiated supply procurements, when "proprietary data" as defined in § 18-9.201, is to be obtained, the Schedule of the contract will specify the extent of the "proprietary data" to be furnished.

#### § 18-9.203-3 Limited rights in data provision for use in supply contracts.

In negotiated supply contracts where "proprietary data" is to be acquired and such data is needed only for a limited purpose, such as maintenance, the clause set forth in § 18-9.203-2 should be supplemented by the additional paragraph (j) set forth below. The Schedule of the contract must state the extent of the "proprietary data" to be furnished subject to such limitations. Paragraph (j) below is not authorized for use in a contract having as one of its principal purposes experimental, research or developmental work.

(j) That portion of the Subject Data delivered under this contract which is identified in the Schedule as being subject to limitations shall not be released outside the Government, nor be duplicated, used, or disclosed in whole or in part for procurement or manufacturing purposes (other than for manufacture required in connection with repair or overhaul where an item is not procurable commercially so as to enable the timely performance of the overhaul or repair work: *Provided*, When Data is released by the Government to a Contractor for such purposes, the release shall be made subject to the limitation of this clause: *Provided further*, Such Data shall not be used for manufacture or procurement of spare parts for stocks), without permission of the Contractor, if the following legend is marked on each piece of Data so limited either in its entirety or only partially as to its content:

"Furnished under United States Government Contract No. \_\_\_\_\_ and only those portions hereof which are marked (for example, by circling, underscoring, or otherwise) and indicated as being subject to this legend shall not be released outside the Government (except to foreign governments, subject to these same limitations), nor be disclosed, used, or duplicated, for procurement or manufacturing purposes, except as otherwise authorized by contract, without the permission of \_\_\_\_\_. This legend shall be marked on any reproduction hereof in whole or in part."

*Provided*, That such Data may be delivered to foreign governments as the national interest of the United States may require, subject to the limitations specified in this paragraph. The Contractor shall not impose limitations on the use of any piece of Data, or any portion thereof, which the Contractor has previously delivered to the Government without limitations. (July, 1962)

#### § 18-9.204 Contract clauses—special.

##### § 18-9.204-1 [Reserved]

#### § 18-9.204-2 Production of motion pictures.

The clause set forth below is approved for use in contracts for the production of motion pictures with or without accompanying sound, and in all contracts for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like.

##### RIGHTS IN DATA (JULY 1962)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All Subject Data first produced in the performance of this contract shall be the sole property of the Government. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole or in part or in any manner or form, nor authorize others so to do, without the written consent of the Government until such time as the Government may have released such Data to the public.

(c) The Contractor agrees to grant and does hereby grant to the Government and its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world (i) to publish, translate, reproduce, deliver, perform, use and dispose of, in any manner, any and all Data not first produced or composed in the performance of this contract but which is incorporated in the work furnished under this contract; and (ii) to authorize others so to do.

(d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyright or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any Data furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in such Data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; provided, such incorporated material is identified by the Contractor at the time of delivery of such work.

#### § 18-9.204-3 Histories and other works.

The contract clause set forth in § 18-9.204-2 is suggested for use in contracts for—

(a) Histories of NASA activities or installations;

(b) Works pertaining to recruiting, morale, training or career guidance;

(c) Surveys of Government establishments; and

(d) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties.



When the "Rights in Data" clause of § 18-9.204-2 is used in contracts of the kinds listed above, there will be added to the end of the first sentence of paragraph (a) of that clause, the words, "or which are in fact delivered to the Government in the performance of this contract."

**§ 18-9.204-4-49 [Reserved]**

**§ 18-9.204-50 Short form clause, fixed price, research contract with non-profit institutions (including educational institutions).**

In contracts of the kind described in the heading, which are executed using NASA Form 246, the following clause will be included in the contract.

**TECHNICAL REPORTS AND DATA (JULY 1962)**

(a) Upon completion of the work under this contract, the Contractor shall submit the number of copies required in the Schedule of a complete and final technical report of its findings and conclusions together with any original illustrations and photographic negatives. With the prior approval of the Contracting Officer, the Contractor may submit interim technical reports in lieu of the final report at such intervals as may be agreed upon.

(b) The Government may publish, reproduce or use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information and other scientific data resulting from this contract.

**§ 18-9.204-51 Short form clause, cost-reimbursement, research contract with nonprofit institutions (including educational institutions).**

In contracts of the kind described in the heading, which are executed using NASA Form 419S, the following clause will be included in the contract.

**DATA AND INSPECTION (JULY 1962)**

The Government may publish, reproduce, and use, and have others so do, for any purpose, without limitation, drawings, studies, research notes, technical information, and other scientific data resulting from this contract. The Government has the right, at all reasonable times, to inspect or otherwise evaluate the work being performed under this contract.

**§ 18-9.205 Contracts for acquisition of existing works.**

**§ 18-9.205-1 Off-the-shelf purchase of books and similar items.**

Notwithstanding the instructions of any other paragraph of this Subpart, no contract clause contained in this Subpart

need be included in contracts for the separate, sole procurement of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for purchase (such as the off-the-shelf purchases of existing products) unless the right to reproduce such data is an objective of the contract.

**§ 18-9.205-2 Contracts for existing motion pictures.**

Contracts for the procurement of existing motion pictures or for the modification of existing motion pictures will be made only after consultation with legal counsel.

**§ 18-9.206 Contracts to be performed outside the United States.**

(a) Except as otherwise provided in §§ 18-9.204 and 18-9.205, the clause set forth below will be included in all contracts under which (1) technical information including reports, drawings, blueprints or other data is specified to be delivered to the Government, and (2) the work is to be performed outside the United States, its possessions, or Puerto Rico, regardless of the place of delivery.

**TECHNICAL INFORMATION (JULY 1962)**

The Government may duplicate, use and disclose, in any manner for its Government purposes, including delivery to other governments for the furtherance of mutual defense of the United States Government and such other governments, all or any part of the technical information including reports, drawings, blueprints, and other data specified to be delivered by the Contractor, to the Government under this contract.

(b) The above clause may be modified by substituting "the United States Government" for "Government;" however, when the contractor is a foreign government, the above clause will be modified by substituting "the United States Government" for "Government" and by substituting the name of the foreign government for "Contractor."

The provisions of Part 18-7 and Subpart 18-9.1 except §§ 18-9.101-1 and 18-9.101-2, will be effective February 1, 1963. The excepted sections will be effective December 30, 1962.

The provisions of Subpart 18-9.2 were effective July 26, 1962.

ALBERT F. SIEPERT,

*Director of Administration.*

[F.R. Doc. 62-12321; Filed, Dec. 17, 1962; 8:45 a.m.]



















